17-5-86

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 128.

AUGUSTIN I. AMBLER, APPELLANT,

vs.

CHARLES P. CHOUTEAU, EDWIN HARRISON, GERARD B. ALLEN, CHARLES H. PECK, GEORGE H. REA, THEODORE LAVEILLE, CHARLES P. WARNER, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED OCTOBER 27, 1879.

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INDEX.

	Original.	Print.
Bill of complaint	2	1

EXHIBITS.

Agreement between Whipple and Ambler, May 24, 1869	130	39
Ambler's exhibit No. 2, assignment of Ambler to Whipple	132	41
Specification to letters patent 92687 to Whipple and Ambler	135	43
Specification to letters patent 95665 to T. S. Dickerson	140	46
Assignment of Dickerson to Whipple	142	49
Specification to letters patent 102662 to Dickerson and Whipple	144	50
Original bill in supreme court, District of Columbia, Ambler *vs.* Whipple and Dickerson	147	54
Supplemental bill, Ambler *vs.* Whipple and Dickerson	154	62
First opinion Supreme Court of the United States in case of Ambler *vs.* Whipple and Dickerson	156	64
First decision of Patent Office	166	69
Second decision of Patent Office	169	72
Third decision of Patent Office	179	76
Specification to letters patent 131240 to Ambler	182	77
Contract of Whipple and Dickerson with Liquid Fluid and Illuminating Company	184	80
Articles of association of Liquid Fluid and Illuminating Company	188	82
Assignment of Blunt and Insley to Liquid Fluid and Illuminating Company	191	82
Affidavit of Stilson Hutchins	195	84
Specification to letters patent 102662 to Dickerson and Whipple	206	87
Specification to letters patent 95665 to Dickerson	210	90
Second opinion Supreme Court of the United States in case of Ambler *vs.* Whipple and Dickerson	212	92

	Original.	Print.
Mandate of Supreme Court of the United States in case of Ambler *vs.* Whipple and Dickerson	216	94
Complainant's abstract of pleadings	219	96
Defendants' abstract of pleadings	266	110
Subpœna in chancery	285	121
Return to same	286	121
Appearance of defendants	288	122
Demurrer to bill	289	123
Stipulation of submission	291	123
Decree dismissing bill	292	124
Appeal allowed	293	125
Appeal bond approved	294	125
Appeal bond	295	125
Clerk's certificate	296	126

1 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States in and for said district.

Be it remembered that on the 8th day of August, A. D. 1877, the following proceedings were had at the office of the clerk of the circuit court of the United States in and for the eastern district of Missouri, and appear of record, to wit:

A. I. AMBLER, COMPLAINANT,
vs.
CHARLES P. CHOUTEAU ET AL., DEFENDANTS. } 1054.

This day comes the complainant, by his solicitor, T. W. B. Crews, esquire, and files his bill of complaint against said defendants, and on motion of said solicitor it is ordered that a subpœna in chancery issue against said defendants, returnable to rules the first Monday, the 3rd day of September next.

Said bill and subpœna in chancery are in words and figures as follows, to wit:

2 In the circuit court of the United States for the eastern district of Missouri, in equity sitting.

AUGUSTIN I. AMBLER
vs.
CHARLES P. CHOUTEAU, EDWIN HARRISON, the heirs and legal representatives of Jules Vallé, deceased; Felix Vallé, Gerard B. Allen, Charles H. Peck, George H. Rea, Theodore Laveille, Charles P. Warner, Stilson Hutchins, the heirs and legal representatives of John Kupferle, deceased; Frank Gregory, Oliver B. Filley, James G. Blunt, Merritt H. Insley, Albert C. Allithorpe. } No. . Bill.

To the honorable the judges of the circuit court of the United States for the eastern district of Missouri, sitting in equity:

3 Augustin I. Ambler, of the city of New York, and a citizen of the State of New York, brings this his bill of complaint against Charles P. Chouteau, Edwin Harrison, the heirs and legal representatives of Jules Vallé, deceased; Felix Vallé, Gerard B. Allen, Charles H. Peck, George H. Rea, Theodore Laveille, Charles P. Warner, Stilson Hutchins, the heirs and legal representatives of John Kupferle, deceased; Frank Gregory, Oliver B. Filley, James G. Blunt, Merritt H. Insley, and Albert C. Ellithorpe, all of the city of St. Louis and citizens of the State of Missouri, except James G. Blunt and Merritt H. Insley, who are citizens of the State of Kansas, and Albert C. Ellithorpe, who is a citizen of the State of Illinois, as the complainant is informed and believes, and

therefore says; and they are directors and stockholders in the Missouri Liquid Fuel and Illuminating Company, and hold interests therein, said company having been fraudulently incorporated under the laws of
4 the State of Missouri December 18th, 1871, and the articles of association having been filed and recorded in the office of the secretary of state December 19th, 1871, with a capital stock of $500,000.

2. Thereupon your orator complains, and says that he is now, and has been since the 13th day of July, 1869, and previously thereto, the rightful owner of certain valuable interests in inventions, discoveries, and improvements in the manufacture of gas from petroleum, described and set forth in letters patent of the United States No. 92687, issued July 13th, 1869, to Rodney M. Whipple and Augustin I. Ambler, No. 95665, issued October 12th, 1869; to Thomas S. Dickerson and Rodney M. Whipple as the assignees of Thomas S. Dickerson, and No. 102662, issued May 3d, 1870, to Thomas S. Dickerson and Rodney M. Whipple. And your orator avers that one-half of said patents Nos. 95665 and 102662 were received and held by said Dickerson and Whipple as trustees in trust for your orator. And your orator is also the owner of certain rights, franchises, benefits, privileges, sales, and receipts arising therefrom, and
5 to arise therefrom, as decided in favor of your orator November 30th, at October term, 1874, of the Supreme Court of the United States, as will hereinafter more fully appear.

3. That the retrospective interest of your orator in said inventions, discoveries, and improvements in the manufacture of gas from petroleum, and the rights, franchises, benefits, privileges, sales, and receipts arising therefrom, as rendered by the decision of the Supreme Court of the United States in favor of your orator in that behalf, your orator estimates and believes to be of the value of over four millions of dollars, not including the prospective interest of your orator therein and hereafter to arise therefrom; and your orator avers that these defendants, and each and every of them, jointly and severally, are chargeable therewith and legally bound therefor, by reason of the premises hereinafter set forth, either by implication, construction, or operation of law, or otherwise.

6 4. That certain trusts have heretofore been formed and created in this behalf, both express and implied; express by instruments of writing under seal, duly evidencing the trust, and implied by construction or operation of law, wherein Rodney M. Whipple and Thomas S. Dickerson are decreed by the Supreme Court of the United States trustees of your orator to the extent of one-half of letters patent Nos. 95665 and 102662 aforesaid, and of the profits realized by them, or either of them, from the use or sale, or otherwise arising from said patents as will hereinafter more fully appear.

5. That a fraudulent breach of trust in this behalf has heretofore been made by Rodney M. Whipple, the trustee raised and created by the instruments of writing under seal as aforesaid, aided and abetted by Thomas S. Dickerson, by seizing and appropriating to their own use and behoof the franchise and trust property of your orator to the entire exclusion of all the rights of your orator therein, and by the appropriation and use of the proceeds derived from the sales and alienation of the
7 trust property in violation of your orator's rights in the premises, and these defendants have fraudulently concurred, joined, aided,

and abetted therein with a full knowledge of the trust and the breach of the trust by Whipple and Dickerson, by the purchase and appropriation of a part of the trust property and by other means and acts committed in fraud and violation of the same with full knowledge and in violation of the rights of your orator.

6. And hereupon your orator avers that the subject-matter of this complaint and the foundation and gravamen of this bill is the franchise, the trust, the breach of the trust, the collusion, conspiracy, and fraud between the defendents and said Whipple and Dickerson, as the trustees of your orator, the rights and remedies of your orator against these defendants, and the prayer for relief.

8 7. Your orator shows unto your honors that this cause is an action on the case in the nature of a conspiracy, founded upon the fraudulent intention and specific acts of the defendants to cheat, swindle, and defraud your orator of his franchise, and the rights in the patent and trust property aforesaid, and that said plan consists in an agreement with a common design to do an unlawful act, and which plan, agreement, and conspiracy, having a common design to do an unlawful act, was fully carried out, as will hereinafter more fully appear, to the great damage and injury of your orator.

8. That said plan, agreement, and conspiracy was first formed and set on foot by Rodney M. Whipple and Thomas S. Dickerson, on or about the 4th of September, 1869, at the shops of Pettit and Dripps, on the corner of 13th street and Ohio ave., in the city of Washington, in the District of Columbia, secretly, surreptitiously, and clandestinely,

9 and that the object and intention of said conspiracy, as far as your orator has been able to learn thereof, was first, to seize and appropriate to their own use, and to the use of their coconspirators, the invention of your orator in gas generators, and the proceeds thereof, and to be derived therefrom; second, to surreptitiously, fraudulently apply for and obtain letters patent thereon, in the name of Thomas S. Dickerson, for the use and benefit of Whipple and Dickerson, in pursuit of the conspiracy aforesaid; third, to ignore and destroy the bona fide partnership of Whipple and Ambler, and the trust created in Whipple by Ambler, and to create upon the invention of your orator the fraudulent partnership of Whipple and Dickerson; fourth, to obtain patents secretly, surreptitiously, and fraudulently upon said invention, to surrender the same and obtain reissues thereon, and to clandestinely and fraudulently manufacture, use, and vend the same; fifth, to extend the same by large public displays

10 and trials of the invention in the names of Whipple and Dickerson to the exclusion of Ambler, the true inventor; sixth, by the combination and association with them of large numbers of individuals in various parts of the country; seventh, by the formation and incorporation of large stock companies in different States of the Union; eighth, by the sale of State and Territorial rights, privileges, and licenses to a large number of individuals for large sums of money, lands, bonds, stocks, notes, and other securities, and to appropriate the same to their own use and behoof and to the use and behoof of those who might thereafter become associated and connected with them, and that in pursuit of this plan and in furtherance of this scheme of fraud now established, not merely prime facie, but as a fact in Rodney M. Whipple and Thomas S. Dicker-

son; by the decision and judgment of the Supreme Court of the
11 United States, November 30th, at the October term of said court 1874, in the case of Ambler vs. Whipple and Dickerson as will hereinafter appear; and defendants, Blunt and Insley, united, colluded, and confederated and conspired, knowingly and with intent to cheat and defraud your orator, with them, said Whipple and Dickerson, by pretending, first, to purchase of them, said Whipple and Dickerson, or one of them certain rights in said invention and patents of certain States or interest therein and thereafter, and upon being fully advised and informed of said plan, agreement, and conspiracy aforesaid, defendants Blunt and Insley at once entered into said plan, agreement, and conspiracy with them, said Whipple and Dickerson, at the city of Washington, D. C., in or about the month of April, 1870, pending the suit of Ambler vs. Whipple and Dickerson in the supreme court of the District of Columbia, in relation to this identical patent and trust property;
12 and that defendants Blunt and Insley then and thereafter knowingly aided and abetted and participated in said conspiracy and in the proceeds thereof, with a full knowledge of the same, of said trust, of said suit, and of all things in relation thereto; and that thereafter and in pursuit and furtherance of the same scheme of fraud and conspiracy large stock companies were formed upon said patents by Whipple and Dickerson and Blunt and Insley, and in the interest of the conspirators, as follows, viz.: "The Keystone Liquid Fuel Company of Pennsylvania," in May or June, 1870; "The Liquid Fuel Company of New Jersey," March 30th, 1871; "The Missouri Liquid Fuel and Illuminating Company," December 18th, 1871; "The Illinois Liquid Fuel Company," March 27th, 1872; "The National Gas and Iron Company," August 1st, 1873; "The Chicago Railway Construction Company," Aug. 1st, 1873; and the charter of the Chicago and Illinois River Railroad Company
13 was fraudulently purchased for the use and benefit of the conspirators by the defendants, or some of them in the interest of the others.

9. That all the foregoing companies, except the "Illinois River Railroad Company" and many others to your orator unknown, were incorporated and organized by the defendants, or some of them, and other conspirators, unknown to your orator, acting with Whipple and Dickerson, Blunt and Insley and the other defendants in this bill, upon letters patent Nos. 95665 and 102662, or one of them, or the proceeds thereof, the trust property aforesaid, by a fraudulent use of the corporate laws of the State in which they were incorporated in furtherance of the plan, agreement, and conspiracy aforesaid, that the stock of said companies and the proceeds derived therefrom were fraudulently seized and appropriated to the use of Whipple and Dickerson, Blunt and Insley and the other defendants in this bill for
14 the purpose of still further carrying out, enlarging, and extending the said scheme of fraud and conspiracy aforesaid, and to the great damage and injury of your orator, and that the other defendants in this bill, entered into this scheme of fraud and conspiracy in the fall and winter of 1871, or previously thereto, after being fully advised and informed of the plan, agreement, and conspiracy aforesaid by Rodney M. Whipple and Thomas S. Dickerson, and by defendants, Blunt and Insley; that it is pretended that Whipple advised and informed them that he, the trustee

and partner of your orator, had purchased the interests of your orator in the partnership and trust property aforesaid, and that he, Whipple, had defeated your orator in the suit of Ambler vs. Whipple and Dickerson, in the supreme court of the District of Columbia aforesaid, thus putting said defendants on notice at the time of the purchase by the
15 defendants, and previously thereto of the legal and equitable rights of your orator and of the suit then depending in said court in relation thereto, but in very truth Whipple and Dickerson did make known to these defendants, the real plan, agreement, and nature of the conspiracy to defraud your orator first set on foot by them at the shops of Pettit and Dripps aforesaid as your orator has reason to believe, from the facts and evidence of record bearing thereon, and he therefore charges the same so to be, and prays for discovery in relation thereto; and your orator further charges that these defendants and each and every of them, did with intent to cheat and defraud your orator, unite, collude, combine, and conspire with said Rodney M. Whipple and Thomas S. Dickerson, and with a full knowledge of the plan, agreement, and conspiracy aforesaid, to injure
16 and defraud your orator of his rights in the patent and trust property aforesaid, and that they, and each and every of them did enter into said conspiracy, and participated therein with a full knowledge of all the facts in relation thereto.

10. That your orator is aware that there are other separate and distinct causes of action against these defendants, and against each and every of them by reason of their unlawful acts and doings in and about the premises, that is to say, first, they are privies, and each and every of them is a privy to the suit of Ambler vs. Whipple and Dickerson, in the supreme court of the District of Columbia, by reason of their purchase of the partnership and trust property aforesaid, the subject-matter of the suit, with notice, pending the same, and could have made, and can now make, themselves parties, and each and every of them could have
17 made and can now make himself a party to said suit, and they are in law and fact, by reason of the premises, cotrustees, and each and every of them is a cotrustee by construction or operation of law with Whipple and Dickerson, defendants in said cause, and are held and lawfully bound, and liable in law and equity for the fraudulent acts of Whipple and Dickerson under the judgment, decrees, and orders in said cause, and they may be properly and lawfully made defendants and parties to the record therein by supplemental bill in said suit, either by the complainant or receiver in said cause; second, they are liable to a suit by the receiver in said cause for and on account of the fraudulent and unlawful dealings with the property of the partnership, and the trust between Whipple and Ambler in fraudulently dealing with the fraudulent firm of Whipple and Dickerson for and on account of which a receiver was duly appointed by the court aforesaid, May 11th, 1877, in said cause; third, that there is
18 a just and lawful cause of action against the "Missouri Liquid Fuel and Illuminating Company," and the corporation known as "Chouteau, Harrison and Vallé," by reason of their fraudulent and unlawful doings in and about the partnership and trust property aforesaid, pending said suit in a court of record of competent jurisdiction, and having jurisdiction in said cause in and about the same, with full knowledge and timely notice thereof, and of all things in relation thereto; and fourth,

for the infringement of letters patent of the United States, No. 131240, in the eastern district of Missouri, and for the damages arising therefrom, but your orator shows unto your honors that neither of said causes of action is included or intended to be included in this suit, and your orator insists that this cause of action contains and is intended to contain but one cause of action, and that is an action on the case in the nature of
19 a conspiracy formed and for the purposes aforesaid, with the intention of cheating, swindling, and defrauding your orator of his rights in the property aforesaid, and of the proceeds, assets, and profits arising and to arise therefrom, and for and on account of which your orator prays relief in damages under the rule of law in such cases to the full extent of the wrong and injury done.

11. And hereupon your orator further avers that Rodney M. Whipple and your orator in the spring of 1869, entered upon an agreement, and united together for the purpose of inventing and discovering a suitable means to generate gas, or an inflammable vapor from petroleum through the agency of steam, and on the 24th day of May, 1869, said Whipple and your orator made and executed under seal and filed in the Pat-
20 ent Office of the United States a certain "memorandum of agreement" forming a copartnership between Rodney M. Whipple and Augustin I. Ambler, for a term of seventeen years from July 13th, 1869, which copartnership has been heretofore dissolved; that said memorandum of agreement was duly recorded in the Patent Office of the United States on the day of its execution, May 24th, 1869, in the books of transfers of patents, in liber O, page 454, and the same is filed herewith and prayed to be made a part of this bill, marked Ambler's Exhibit No. 1.

12. That on the following day, May 25, 1869, your orator made, executed, and delivered to Rodney M. Whipple an assignment under seal in trust of your orator's undivided one-half interest in said invention, and the letters patent or patents that might be issued or obtained thereon, for the purpose of enabling said Whipple, the better to conduct and manage the joint business; that said Whipple accepted the same and filed the executed assignment thereof on the same day for record, and said
21 assignment was duly recorded in the Patent Office of the United States on the 26th day of May, 1869, in liber V, page 114, in the books of transfers of patents, a copy of which is filed herewith and prayed to be made a part hereof, marked Ambler's Exhibit No. 2, which trust has heretofore been annulled.

13. That on the 24th day of May, 1869, said Whipple and your orator made an application as joint inventors, in due form of law, for letters patent of the United States, and complied with all the prerequisites therefor, for an improvement in machines for generating gas from petroleum, which is called "Whipple and Ambler's Steam Petroleum Gas Generating Apparatus," upon which application letters patent of the United States were duly issued, No. 92687, to Rodney M. Whipple and Augustin I. Ambler, July 13th, 1869, and the drawings and specifications of said letters
22 patent are filed herewith, and prayed to be made a part hereof, marked Ambler's Exhibit No. 3.

14. That on the 16th day of December, 1869, Thomas S. Dickerson made ex parte an application for letters patent of the United States for certain intended improvements in gas-generators or liquid-fuel machines

fraudulently, surreptitiously, and wrongfully, and in which application he was aided and abetted by said Whipple, the partners, agent, and trustee of your orator, without your orator's knowledge, privity, or consent*y*, for an invention and discovery which he (said Dickerson) did not invent or discover, and which your orator did invent and discover; that said Thomas S. Dickerson was induced on or about the 4th day of September, 1869, in the city of Washington, into the arcana of the secrets, uses, experiments, and mode of operation of the invention of your orator, and the
23 machine and apparatus which was the joint property of Rodney M. Whipple, and your orator, at the shops of Pettit and Dripps, on the corner of Ohio av. and 13th street, in the city of Washington, by said Whipple, the agent, partner, and trustee of your orator, with a full knowledge of the legal rights and the equitable title of your orator in said invention and machine, and the relation said Whipple bore to your orator as trustee and partner of your orator; and that the said Whipple and Dickenson then and there and thereabout from the 4th day of September to the 16th day of September, 1869, conspired, confederated, and fraudulently united and associated together to injure, defraud, and wrong your orator in and about the invention and discovery, which was the subject-matter of the trust aforesaid, secretly, clandestinely, and fraudulently acting and colluding together to seize and appropriate to themselves
24 the subject-matter of the trust and the proceeds to be derived therefrom, and on the 16th day of September, 1869, as aforesaid, said Thomas S. Dickerson made said application for letters patent as aforesaid; and letters patent No. 95665 were granted to him thereon and issued October 12th, 1869, to Thomas S. Dickerson and Rodney M. Whipple, as the sole assignees of Thomas S. Dickerson, without the knowledge or consent of your orator, and to your orator's damage and injury. Copies of these letters patent will be produced at the hearing at the bar, and a copy of the drawings and specifications is filed herewith, marked Ambler's Exhibit No. 4, and your orator prays that the same may be considered with and made a part hereof; and on the production of said letters patent, or a certified copy thereof, your orator claims leave to refer thereto, when the same shall be produced.

25 15. That on the 24th day of September, 1869, Thomas S. Dickerson pretended to assign and convey to Rodney M. Whipple, the partner, agent, and trustee of your orator, one-half of his (Dickerson's) pretended interest in said invention, and the letters patent which might be issued thereon, for the consideration of one dollar, and directed the Commissioner of Patents to issue the said letters patent in the joint names of Dickerson and Whipple, as aforesaid; and said Whipple, in violation and fraudulent breach of said trust, accepted said assignment of September 24th, 1869, and one-half of the letters patent as aforesaid, without the prvity, knowledge, or consent of your orator, and in violation of the rights of your orator, and in fraudulent breach of trust to your orator as aforesaid.

16. That said assignment of September 24th, 1869, was recorded
26 in the book of transfers of patents, September 27th, 1869, in liber D[12], page 160, a copy of which is filed herewith, and prayed to be made a part of this bill, marked Ambler's Exhibit No. 5.

17. That Thomas S. Dickerson and Rodney M. Whipple, on or about the 15th of April, 1870, made a joint application for other letters patent

upon a modification of the same invention, also the invention of your orator which they called a "Process and apparatus for using liquid fuel for producing heat and light," and upon said application letters patent of the United States, No. 102662, issued to them May 3d, 1870, as aforesaid. A copy of the drawings and specifications of said letters-patent is filed herewith, and prayed to be made a part hereof, marked Ambler's Exhibit No. 6.

18. That your orator brought suit, by bill in chancery, on the 4th day of January, 1870, in the supreme court of the District of Columbia
27 against the said Rodney M. Whipple and Thomas S. Dickerson, and service was had the same day on Rodney M. Whipple, and the appearance of said Dickerson was duly entered therein, No. 1873, equity doc. 10, of said court. This suit was brought by your orator upon the partnership and trust relations raised and created between your orator and said Whipple by the "memorandum of agreement" of May 24th, and the assignment in trust of May 25th, 1869, aforesaid, and against Thomas S. Dickerson as the colleague and confederate of said Whipple, in the breach of the trust aforesaid, and to recover of them your orator's share in the large sums of money and proceeds received by them, their associates, colleagues, and confederates, and of your orator's rights and equities in the fraudulent and unlawful sales of said invention and improvement
28 in gas-generators, as set forth and described in letters patent of the United States, No. 92687 and 95665, and subsequently by supplemental bill so as to include letters patent No. 102662, and your orator shows unto your honors that the final decision of said suit in the Supreme Court of the United States was in favor of your orator, as in the following paragraph set forth upon the merits and all the issues in the case. A copy of the original bill, and of the supplemental bill, is attached hereto, and prayed to be made a part hereof, marked Ambler's Exhibit Nos. 7 and 8.

19. That the Supreme Court of the United States, on the 30th of November, at the October term, 1874, of said court, in the case of Augustin I. Ambler against Rodney M. Whipple and Thomas S. Dickerson, No. 24, in equity, on appeal to the Supreme Court of the United States from the supreme court of the District of Columbia, held and decided that the said Rodney M. Whipple and Thomas S. Dickerson did receive, and do now hold in trust, for the benefit of complainant, Augustin I. Ambler,
29 one-half of the two patents issued to Whipple and Dickerson, and described in the pleadings as Nos. 95665, and 102662, and all the rights, franchises, benefits, privileges, sales, and receipts arising therefrom, and to arise therefrom, a certified copy of the opinion of the Supreme Court of the United States, as delivered by Mr. Justice Miller in said cause will be produced at the bar at the hearing, and a copy is filed herewith and prayed to be made a part of this bill, marked Ambler's Exhibit No. 9.

20. Upon the patents large sales were made, pendente lite, the suit in the supreme court of the District of Columbia, No. 1873 aforesaid, by Thomas S. Dickerson and Rodney M. Whipple, and by James G. Blunt and Merritt H. Insley, who were, and still are, the agents, assignees, and confederates with Whipple and Dickerson in the scheme of fraud aforesaid, and that said sales will appear by a certified transcript thereof, of the
30 record of the Patent Office filed herewith, and prayed to be made a part of this bill, marked Ambler's Exhibit Nos. 10 & 11.

That said sales were all fraudulent sales made in the name of Thomas S. Dickerson and Rodney M. Whipple, and in the names of James G. Blunt and Merritt H. Insley, in pursuance of the scheme of fraud and conspiracy aforesaid; that the sales made by Whipple and Dickerson in the name of the fraudulent firm of Whipple and Dickerson instead of the true and bona fide firm of Whipple and Ambler, as Rodney M. Whipple was bound in law and fact to make said sales, and each any every sale so made was a fraudulent breach of the trust by said Whipple, aided and abetted by Thomas S. Dickerson, and in fraudulent and bold violation of said trust and your orator's rights and equitable title in the franchise and trust property, which these wrong-doers had fraudulently seized and appropri-
31 ated to their own use; and with lawful and timely notice of the claims, rights, and equitable title of your orator therein, and of the fraudulent character of the pretended firm of Whipple *of Whipple* and Dickerson, and of the true and bona fide firm of Whipple and Ambler, they were fraudulently assisted, aided, and abetted by these defendants in violation of the trust aforesaid, and of the rights and equities of your orator therein; and these defendants purchased the same of Blunt and Insley and Whipple and Dickerson, with full knowledge and timely notice thereof, without providing any means of protection for your orator's share of the purchase-money, or any part thereof, as they were in equity bound to do; that your orator has not had, and has not now the possession or control of the conveyances, transfers, or instruments of writing by which said sales were made, but he claims leave to refer to them, and each and every of them, when produced, and to produce the same or certified copies
32 thereof at his option so do.

21. That your orator filed his *sa*le application for letters patent upon the same invention that had been previously patented to Dickerson and Whipple, Nos. 95665 and 102662 *of* aforesaid, on or about the 9th day of May, 1870, and your orator's application was subsequently adjudged to be in interference with the two patents issued to Whipple and Dickerson, Nos. 95665 and 102662; that after the preliminaries prescribed by law, and the rules of the Patent Office in that case made and provided were complied with, the cause was set for hearing and came on to be heard upon the preliminary statements, and the proofs and exhibits in the case before the examiner in charge of interference, and was tried in due form of law before the said examiner, and by him decided in favor of your orator, February 3d, 1872, awarding priority of invention to Augustin I. Ambler over both the patents issued to Dickerson and Whipple, Nos. 95665 and 102662 a copy of which decision is filed
33 herewith and prayed to be made a part of this bill, marked Ambler's Exhibit No. 12.

22. That from this decision Dickerson and Whipple, by their counsel, appealed to the board of examiners-in-chief, and upon the hearing before the board the decision of the examiner in charge of interferences was affirmed by the board and priority of invention was again awarded to Augustin I. Ambler, your orator, May 9th, 1872. A copy of this decision is also attached hereto and prayed to be made a part of this bill, marked Ambler's Exhibit No. 13.

23. From this decision Whipple and Dickerson, by their counsel, again appealed; and their case was duly carried before the honorable Commis-

sioner of Patents in person. The cause came on to be heard and was tried, counsel being present on both sides, and the decision was again in favor of Augustin I. Ambler. The honorable M. D. Leggett, then
34 Commissioner of Patents, in delivering his decision said, "I have no hesitation in confirming the decision of the board, awarding priority of invention to him." This decision was made August 21st, 1872, a copy of which is filed herewith and prayed to be made a part hereof, marked Ambler's Exhibit No. 14.

24. And letters patent No. 131240 were issued to your orator September 10th, 1872, as the first, sole, and original inventor of the invention set forth and described in letters patent Nos. 95665 and 102662; in accordance with said decision, a certified copy of said letters patent is filed herewith, and prayed to be made a part of this bill, marked Ambler's Exhibit No. 15.

25. And hereupon your orator charges against these defendants full knowledge and lawful and timely notice of each and every of said decisions in the Patent Office of the United States as aforesaid, and of the issue of said letters-patent No. 131240 thereon.

35 26. That Dickerson and Whipple sold and conveyed the franchise, the invention, discovery, and inprovements in the manufacture of gas from petroleum, as set forth and described in patent No. 95665 and the improvements thereon, the trust property aforesaid, for the State of Missouri, on or about the 21st day of April, 1870, for the sum of $35,000, to defendants James G. Blunt and Merritt H. Insley, and said Blunt and Insley purchased the same with a full knowledge of the trust and timely notice of the equitable rights and title of your orator therein and of the breach of trust aforesaid by Whipple and Dickerson, the vendors to them, and without the knowledge or consent of your orator, and to your orator's damage and injury, and without providing any means whatever for the protection of your orator's share
36 of the trust property or the proceeds thereof, as they were bound and obligated by law to do, in accordance with equity and good conscience.

27. That Dickerson and Whipple further sold and conveyed the franchise, the invention, discovery, and improvements in the manufacture of gas from petroleum, as set forth and described in patent No. 102662, and the improvements thereon, and the trust property aforesaid for the State of Missouri on the 23d day of December, 1871, for the further sum of $35,000 to defendants, James G. Blunt and Merritt H. Insley, and said Blunt and Insley purchased the same of said Dickerson and Whipple with full knowledge of the trust, the breach of the trust, and of the rights of your orator as in the preceeding paragraph set forth.

28. That Thomas S. Dickerson and Rodney M. Whipple entered upon a contract or agreement to convey all improvements which they
37 might make on *on* said patents Nos. 95665 and 102662, December 23d, 1871, for the nominal consideration of $5.00, and other considerations therefor, to the "Missouri Liquid Fuel and Illuminating Company" upon certain conditions named in the agreement. (A copy of this agreement will be produced at the bar at the hearing.) Your orator avers that at the time of this agreement, December 23d, 1871, the incorporators of the "Missouri Liquid Fuel and Illuminating Company" had full knowledge of the trust aforesaid, and of the fraudulent breach of trust as aforesaid, and of

the equitable title and legal rights of your orator in the subject-matter of the contract aforesaid, and made said contract in fraud of your orator's rights and without providing any means of protection for your orator's share of the profits to be derived therefrom, and to your orator's damage and injury. A copy of said contract is filed herewith and prayed to be made a part hereof, marked Ambler's Exhibit No. 16.

38 29. That on or about the 18th day of December, 1871, defendants James G. Blunt and Merritt H. Insley sold and conveyed to the Missouri Liquid Fuel and Illuminating Company, the franchise and interest of your orator as they had purchased the same of the trustees of your orator, with a full knowledge of the trust, and of the fraud and breach of the trust aforesaid, and, with lawful and timely notice of your orator's equitable title and legal rights therein, and with lawful notice thereof for the sum of $500,000, as your orator has been informed and believes, and the incorporators of the Missouri Liquid Fuel and Illuminating Company made said purchase and paid said large sum of money with full knowledge of the trust and of the fraud and breach of trust aforesaid, and with lawful and timely notice of your orator's legal rights and equitable title therein; without any effort whatever on the part of

39 said directors of said company to protect your orator's share of the purchase-money as they were bound in law, in equity, and good conscience to do, in this behalf and without the knowledge or consent of your orator and to your orator's damage and injury; and that said Blunt and Insley thereupon became members, stockholders, trustees, and directors in and of said company, becoming, in fact, both vendors and vendees of the franchise and trust property aforesaid; in dealing with and becoming a director in said Missouri Liquid Fuel and Illuminating Company as will appear by a copy of the articles of association filed herewith and prayed to be made a part hereof, marked Ambler's Exhibit No. 17.

30. That James G. Blunt and Merritt H. Insley sold and conveyed the right in said invention and the patents issued to Whipple and Dick-

40 erson for the State of Missouri by assignment bearing date Dec. 23d, 1871, and said assignment was duly recorded by the procurement of the incorporators of said company, defendants herein, in the Patent Office of the United States, January 13th, 1872, in Liber C^{15}, page 251, as will appear by a copy thereof filed herewith and prayed to be made a part of this bill, marked Ambler's Exhibit No. 18.

31. And hereupon your orator complains and says, the Missouri Liquid Fuel and Illuminating Company is formed, founded, and incorporated as aforesaid, solely and exclusively upon letters patent of the United States Nos. 95665 and 102662, and the invention therein described and set forth, granted, and issued to Thomas S. Dickerson and Rodney M. Whipple; one-half in trust for the benefit of your orator, as in the first paragraph of this bill set fourth, and called in, the article of association of said Missouri Liquid Fuel and Illuminating Company, Whipple and Dicker-

41 son's patent for generating gas from petroleum and other oleaginous substances.

32. The object of said company is the production of heat and light for manufacturing and illuminating purposes, by the use of the invention, discovery, and improvements aforesaid, and the machine or apparatus, by which the same may be utilized; and the directors and stockholders of the

Missouri Liquid Fuel and Illuminating Company seek protection in the use and manufacture in the State of Missouri of the invention, discovery, and improvements of your orator, by the letters-patent Nos. 95665 and 102662, and in fraud of the just rights and equitable title of your orator, and without providing any protection whatever to your orator for his share of the proceeds derived and to be derived therefrom.

33. That the sale of the State of Missouri by Whipple and Dickerson, to Blunt and Insley, was first made on or about April 21st, 1870, dur-
42 ing the pendency of the suit of Ambler vs. Whipple and Dickerson in fraud of Ambler's rights, and to promote the scheme of fraud previously inaugurated and set on foot by Whipple and Dickerson; and defendants Blunt and Insley, pending said suit, again purchased of Whipple and Dickerson the same franchise, and for the same purpose, December 23d, 1871, and on the same day last named and for the same purpose defendants Blunt and Insley sold to the Missouri Liquid Fuel and Illuminating Company, which company had been previously incorporated to further and promote the fraud, showing contemporaneous assignments or titles of conveyance from Whipple and Dickerson to defendants Blunt and Insley and from Blunt and Insley to the Missouri Liquid Fuel and Illuminating Company, just twenty-one days after the decision of the supreme
43 court of the District of Columbia against the complainant Ambler in said cause, and in favor of the defendants Whipple and Dickerson, and the defendants to this bill knew of said decision as soon as rendered, by telegrams and otherwise, and before the purchase made by them of Whipple and Dickerson, and before the conveyance made by defendants Blunt and Insley to the Missouri Liquid Fuel and Illuminating Company, and the contract with Whipple and Dickerson for the use and benefit of the company, and that Ambler had perfected his appeal to the Supreme Court of the United States, and that the Missouri Liquid Fuel and Illuminating Company was incorporated with the intent to swindle and defraud your orator, and fraudulently formed to extend, enlarge, and promote the scheme of fraud and conspiracy by the defendants herein, and said
44 company, by their directors, subsequently and for the same purpose, fraudulently purchased said property and franchise covered by the trust pendente lite said suit, with a full knowledge of the state of things, and said directors, the defendants herein, thereby became parties to the scheme of fraud and conspiracy inaugurated previously by Whipple and Dickerson, and thereafter promoted by Blunt and Insley ab initio.

34. That the defendants formed and incorporated The Missouri Liquid Fuel and Illuminating Company, and became directors and shareholders therein with the object and intention of deceiving and defrauding both your orator and the public, for which they fraudulently made use of and violated the corporate laws of the State of Missouri, as will appear by the modus operandi of forming, incorporating, and managing the busi-
45 ness of said company. The company was formed with a capital stock, fully paid up, as claimed, of $500,000. The company then purchased the so-called Whipple and Dickerson's patent rights for manufacturing gas from petroleum, etc., of James G. Blunt and Mérritt H. Insley for $500,000; $83,000 of which the company contracted to pay in cash, and $417,000 is fully paid-up stock of the company; the performance of this contract on the part of the company would leave but $88,000 of stock

in the company from which to pay the $83,000 to Blunt and Insley, and without a dollar in the treasury for working capital, or for any other purpose, except as hereinafter set forth; to raise and pay this $83,000, subscribers were obtained for the capital stock, who gave their notes for the amount subscribed with some kind of an understanding that Blunt and Insley would give them, and transfer to them an amount equal to their subscription, cer-
46 tificates of stock from the $417,000 of stock issued to them as fully paid-up stock, by which means their subscriptions would be doubled, or they would pay only fifty cents on the dollar for the actual stock received on the account of the subscription as shown by the facts in the case of Charles P. Chouteau. Mr. Chouteau subscribed $12,500 to the capital stock of said company, and received December 25th, 1871, certificate No. 1 for 125 shares, the par value of each share being $100—$12,500, for which, in violation of the statute under which the company was incorporated, he gave his note, or writing obligatory which he subsequently paid. Blunt and Insley then delivered to Chouteau another certificate, No. 16, issued the same day as the former for 125 shares, of the par value of $12,500, for which he paid nothing. Mr. Chouteau thus received for his subscription to said stock of $12,500 on the note or
47 obligation given therefor $25,000 of fully paid-up stock of said company, and the same facts apply to all the subscribers to said stock other than Blunt and Insley, who conveyed the patent rights.

35. That the company of Chouteau, Harrison and Vallé subscribed for $12,500 of said stock, which was issued to them December 25th, 1871, certificate No. 2 for 125 shares—$12,500, for which, in violation of the statute, said company of Chouteau, Harrison and Vallé gave their note or writing obligatory, which was subsequently paid; that this company was then composed of Charles P. Chouteau, Edwin Harrison, Jules Vallé, deceased, and Felix Vallé, who are personally made defendants in this suit; that Blunt and Insley also delivered to them a certificate, (No. 17), for other $12,500 of the stock issued to Blunt and Insley, as a part of the consideration named in the conveyance
48 by them to the company, for which they, Chouteau, Harrison and Vallé paid nothing; they thus received for the $12,500 subscription on their note or writing obligatory given therefor, $25,000 of stock of said "Missouri Liquid Fuel and Illuminating Company;" that the said defendants Charles P. Chouteau, Edwin Harrison, and Jules and Felix Vallé formed said company of Chouteau, Harrison and Vallé, and they thus and thereby became connected with said scheme of fraud and conspiracy for the express purpose of giving character, credit, and influence to the enterprise fraudulently incorporated and known as the "Missouri Liquid Fuel and Illuminating Company," the incorporation of said company being one of the acts included in the plan of the scheme of fraud and conspiracy aforesaid.

36. That it was understood that stock of said "Missouri Liquid
49 Fuel and Illuminating Company" should be issued in a most peculiar manner, and it was so issued; that the object and intention of its issue would be known and patent upon its face to the defendants and those to whom they communicated the same in their secret and fraudulent transactions in dealing with the stock in relation to this trust property, but to no others, as will appear by the following changes on the face of

the issue of stock by the company in pretended payment of the $417,000 of "fully paid-up stock" and the significance or meaning of the same. The stock issued to Blunt and Insley, was issued to double the subscription stock of any party or person subscribing and paying for a like amount as in the case of certificate No. 16 for 125 shares issued to Blunt and Insley for $12,500 on account of the $417,000 of the "paid-up stock" issued as a part of the consideration for the purchase of the patent right and transferred or delivered to Charles P. Chouteau by Blunt and Insley as aforesaid; the stock issued jointly
50 as appears upon its face to James G. Blunt and Merritt H. Insley, was to be sold at 50c. on the dollar and placed in the treasury for use, by the company, as a sinking fund from Blunt and Insley in the furtherance of the scheme. The stock issued to James G. Blunt was to go to him individually, as his share of the residue of the $417,000 of stock paid for the patents; and the stock issued to Merritt H. Insley was to go to him personally as his share of the stock of the residue of the $417,000 of stock paid for the patent rights purchased by the company. It was thus understood that Blunt and Insley were to sell stock at 50c. on the dollar from the $417,000 and place in the treasury the sum of $42,000 as working capital, a very small part of which sum was used in the operations of the company.

37. That in the same way, or in some similar or other manner a large part or a portion of the notes, money, and stock moved to Rod-
51 ney M. Whipple and Thomas S. Dickerson, or one of them, directly or otherwise, the facts in relation to which are well known to these defendants, and it was so understood and agreed that it should go to Whipple and Dickerson or one of them, on account of said transaction, the facts in relation to which are well known to these defendants, and of which facts your orator prays discovery.

That it is practically and specifically shown that these defendants participated, not only in the general plan and common purpose, object, and design of the conspiracy in the fraudulent incorporation of the company, but in the appropriation and use of the proceeds and profits derived therefrom and growing out of the scheme, and not as incorporators merely, but in each case individually by accepting and receiving from Blunt and Insley, the agents, assignees, and confederates of Whipple and Dickerson, a part of the proceeds and assets derived from the transaction—that is, Chouteau gave his note for and paid his subscription to the stock of said company $12,500, and he then accepted and received from
52 Blunt and Insley in the transaction a certificate of stock for $12,500 for which he paid nothing, and which was a part of the $417,000 of "paid-up stock," pretended to be received as a part of the consideration for the conveyance made by James G. Blunt and Merritt H. Insley, and in which both Whipple and Dickerson, by their conveyance to said company, participated with them, and these facts apply to each and every of the individual incorporators of said company, except Blunt and Insley, the agents, assignees, and confederates of Whipple and Dickerson, and also excepting such of the defendants as did not pay their subscription, or left their certificates in the company subject to their order of issue to them, which was the case in a few instances only.

Your orator hereupon charges the true facts in the case to be—that the

entire plan and scheme of the conspiracy was fully communicated to the defendants here, and up' which meetings were held at parlor No. 5,
53 of the Southern Hotel, in St. Louis, and at the meeting there held December 19th, 1871, there were present Gerald B. Allen, Charles H. Peck, Rodney M. Whipple, Theodore Laveille, George H. Rea, Stilson Hutchins, Charles P. Chouteau, James G. Blunt, John Kupferle, Wells Hendershott, Frank Gregory, Charles P. Warner, Albert C. Ellithorpe, Merritt H. Insley, E. A. Richardson, and others. The object of the meeting was explained by James G. Blunt, and the meeting was organized by the choice of Gerald B. Allen, president, and Stilson Hutchins, secretary. The object was explained to be the organization of a stock company under the corporate laws of the State of Missouri, upon the so-called Whipple and Dickerson patents, for the manufacture of gas from petroleum, etc., which object was carried out by the incorporation of said "Missouri Liquid Fuel and Illuminating Company."

38. That in order to evade the rights of Ambler in said patents and the subject-matter thereof, and the suit of Ambler vs. Whipple and
54 Dickerson, then depending in the supreme court of the District of Columbia aforesaid, and of which these defendants had knowledge, it was planned and agreed that the company should be formed on a basis of $500,000, in fully paid-up stock of said company; that the patents should be purchased by the company of Blunt and Insley and Whipple and Dickerson, for the full sum of $500,000—$83,000 of which should be paid to them in individual notes or writings obligatory by the treasurer, which notes were to be received from the subscribers to the stock for the amount of their subscription, as heretofore set out; that these notes were to go to Blunt and Insley, and Whipple and Dickerson, who were to collect them, and of the amount collected they were to place in the treasury, for the use and purposes of the company, $20,000, leaving in the hands of Blunt and Insley and Whipple and Dickerson $63,000 of the $83,000 of notes received by them, and $417,000 of "fully paid-up stock" of the company. In furtherance of the plan this stock
55 was issued in part as aforesaid to "Blunt and Insley," to double the stock of the subscribers for the $83,000 as aforesaid, reducing the $417,000 to $334,000 of stock, and this stock was further reduced by stock issued jointly to "James G. Blunt and Merritt H. Insley, for 840 shares, or $84,000, which was to be used for the benefit of the company (e. e.), leaving but 2,500 shares, or $250,000, out of the $417,000 to be distributed between Blunt and Insley and Whipple and Dickerson.

39. That the true consideration paid and really moving to the vendors, Blunt and Insley and Whipple and Dickerson, in this transaction, was first $83,000 less the $20,000 aforesaid, and 250 shares of stock of said company of the par value of $250,000. That of the $83,000 they paid to the company as a sinking fund $20,000 as aforesaid, and of the $417,000 named in the conveyance they paid back to the company 840 shares, of the par value of $84,000, and to the individual subscribers 830 shares, of the par value of $83,000, for which neither the company nor the indi-
56 vidual stockholders paid one dollar; nor was one dollar paid for the $20,000 aforesaid. It is thus shown that the company received of the vendors in the transaction, first $20,000, and second 840 shares of the $417,000 of stock issued to Blunt and Insley as the pretended con-

sideration for the purchase, and that the individual subscribers were paid by Blunt and Insley for joining the conspiracy, certificates of stock at par value for double the amount of their subscription, and for which there was no lawful consideration whatever, and that all this was done in pursuit and furtherance of the scheme of fraud and plan of conspiracy aforesaid, and with the intent to cheat, swindle, and defraud your orator of his rights and equities in the patent and trust property aforesaid, and pending said suit of Ambler vs. Whipple and Dickerson, in relation thereto, and with full knowledge and timely notice on the part of said defendants, and each and every of them of said trust and of said suit, and of all things in relation thereto.

57 40. That these defendants conspired with Whipple and Dickerson to destroy the firm of Whipple and Ambler in all their acts and proceedings aforesaid, and by many other acts of collusion and fraud acknowledged and held out to the world the fraudulent firm of Whipple and Dickerson, and gave to said fraudulent firm credit, character, and support, by dealing with them, their agents, a[illegible]gnees, and confederates, by accepting title under them, both direct and through their agents and confederates, by accepting the inducements held out to them by said Whipple and Dickerson, and by granting to them extraordinary privileges and advantages in and about the premises of the Laclede Rolling Mills, the property of Chouteau, Harrison, and Vallé, and by extending to Whipple and Dickerson the use of their names, influence, and credit, to hold these facts out to the world, with the fraudulent design and intent of enhancing, extending, and enlarging the credit, character, and representations of Whipple and Dickerson in and about the premises, to the entire exclusion of the bona fide firm
58 of Whipple and Ambler, and with the special and particular intent to defraud, cheat, and swindle your orator of his rights in the partnership and trust property aforesaid, and with full knowledge thereof, pending the suit of Ambler vs. Whipple and Dickerson, and with lawful and timely notice of said suit and of all things in relation thereto.

41. That among the inducements held out by Whipple and Dickerson, and accepted by these defendants, to enter into and become confederates in the scheme of fraud and conspiracy aforesaid, were first, the large prospective value, importance, and magnitude of the invention in the arts and sciences, and especially in the manufacture of iron, and gas for illuminating purposes; and second, the certificates issued to and delivered by Blunt and Insley to each of the confederates to double the stock that each party subscribed for, amounting in the aggregate to $83,000, for which there was no lawful consideration and for which they paid nothing, and which
59 they received as their share of the proceeds *of the proceeds* of the scheme in this transaction, and which your orator sets out specially as follows, namely: To Charles P. Chouteau certificate No. 16 for 125 shares of the par value of $125,000; to Chouteau, Harrison and Vallé certificate No. 17 for 125 shares of the par value of 12,500; to Charles H. Peck certificate No. 18 for 100 shares of the par value of $10,000; to George H. Rea certificate No. 5 for 100 shares of the par value of $10,000; to Stilson Hutchins certificate No. 19 for 50 shares of the par value of $5,000; to Hutchins and Ewing, for Stilson Hutchins, certificate No. 20 for 50 shares of the par value of $5,000; to Theodore Laveille certificate 21 for 50 shares of the par value of $5,000, issued to Blunt and Insley,

and by them returned and subsequently issued to H. I. Christoph, and by him returned, and reissued to H. Lowry by certificate No. 122, dated June 27, 1872; to Frank Gregory, certificate No. 22 for 50 shares of the par value of $5,000; this certificate remains in the hands of the president subject to the order of Gregory; to Gerard B. Allen and Co. 25 shares; the agreement was the same as in the other cases, but
60 the certificate was not issued and remains in the hands of the president; a special condition was made in the case of Mr. Allen that his company should pay their subscription of 25 shares of the par value of $2,500 in work at their shops in building machines, and on account of which subscription and payment said Allen was to receive of Blunt and Insley other 25 shares the same as their codefendants; defendant Oliver B. Tilley, being a partner of the firm of Gerard B. Allen and Co., to John Kupferle 25 shares which stands in substantially the same condition as that of his codefendant Allen; to A. C. Ellithorpe certificate No. 23 for 50 shares of the par value of $5,000, leaving 30 shares of the 830 shares only to be accounted for, and of which your orator is not fully informed; the facts and evidences of which are with the defendants.

42. That Charles P. Chouteau is no', and has been, the president, and Stilson Hutchins the secretary of said Missouri Liquid Fuel and Illuminating Company ever since the incorporation of said company,
61 December 18th, 1871; that they signed the contract with Whipple and Dickerson December 23rd, 1871, as president and secretary of said company, and that they have signed all the certificates of stock of said company issued to Blunt and Insley and to the subscribers of said stock from first to last, inclusive, the first certificate (No. 1) for 125 shares, having been issued and signed by Charles P. Chouteau as president, and Stilson Hutchins as secretary, to Charles P. Chouteau for his subscription, upon his note for $12,500, as aforesaid, December 25th, 1871, and the last certificate (No. 127) for 50 shares was signed, issued, and delivered in the same way to H. I. Christoph Feb. 8th, 1873, as the act of the corporation, and in pursuance of the general plan of the scheme of fraud and conspiracy aforesaid.

This last issue of stock to said Christoph fixes the existence of said corporation at the date of its issue; and your orator charges that said corporation still and now exists as an incorporated company under the laws of the State of Missouri, if said company ever had a lawful corporate existence at all.

43. That defendant, Gerard B. Allen is a manufacturer of machinery in St. Louis, Missouri, and was at the time of these transactions; and
62 said Allen manufactured a number of these machines under the so-called Whipple and Dickerson patents, and under the direction of Whipple and Blunt, and upon plans, drawings, and specifications furnished by Whipple and Blunt in pursuance of the general plan and common design of Whipple and Dickerson, their agents, assignees, and confederates in the scheme of fraud and conspiracy in violation of the partnership of Whipple and Ambler, and of the trust aforesaid, and pending the suit of Ambler vs. Whipple and Dickerson aforesaid, and with full knowledge and timely notice of all things in relation thereto.

That said Allen kept no books, memoranda, or accounts of these trans-

sideration for the purchase, and that the individual subscribers were paid by Blunt and Insley for joining the conspiracy, certificates of stock at par value for double the amount of their subscription, and for which there was no lawful consideration whatever, and that all this was done in pursuit and furtherance of the scheme of fraud and plan of conspiracy aforesaid, and with the intent to cheat, swindle, and defraud your orator of his rights and equities in the patent and trust property aforesaid, and pending said suit of Ambler vs. Whipple and Dickerson, in relation thereto, and with full knowledge and timely notice on the part of said defendants, and each and every of them of said trust and of said suit, and of all things in relation thereto.

57 40. That these defendants conspired with Whipple and Dickerson to destroy the firm of Whipple and Ambler in all their acts and proceedings aforesaid, and by many other acts of collusion and fraud acknowledged and held out to the world the fraudulent firm of Whipple and Dickerson, and gave to said fraudulent firm credit, character, and support, by dealing with them, their agents, assignees, and confederates, by accepting title under them, both direct and through their agents and confederates, by accepting the inducements held out to them by said Whipple and Dickerson, and by granting to them extraordinary privileges and advantages in and about the premises of the Laclede Rolling Mills, the property of Chouteau, Harrison, and Vallé, and by extending to Whipple and Dickerson the use of their names, influence, and credit, to hold these facts out to the world, with the fraudulent design and intent of enhancing, extending, and enlarging the credit, character, and representations of Whipple and Dickerson in and about the premises, to the entire exclusion of the bona fide firm

58 of Whipple and Ambler, and with the special and particular intent to defraud, cheat, and swindle your orator of his rights in the partnership and trust property aforesaid, and with full knowledge thereof, pending the suit of Ambler vs. Whipple and Dickerson, and with lawful and timely notice of said suit and of all things in relation thereto.

41. That among the inducements held out by Whipple and Dickerson, and accepted by these defendants, to enter into and become confederates in the scheme of fraud and conspiracy aforesaid, were first, the large prospective value, importance, and magnitude of the invention in the arts and sciences, and especially in the manufacture of iron, and gas for illuminating purposes; and second, the certificates issued to and delivered by Blunt and Insley to each of the confederates to double the stock that each party subscribed for, amounting in the aggregate to $83,000, for which there was no lawful consideration and for which they paid nothing, and which

59 they received as their share of the proceeds *of the proceeds* of the scheme in this transaction, and which your orator sets out specially as follows, namely: To Charles P. Chouteau certificate No. 16 for 125 shares of the par value of $125,000; to Chouteau, Harrison and Vallé certificate No. 17 for 125 shares of the par value of 12,500; to Charles H. Peck certificate No. 18 for 100 shares of the par value of $10,000; to George H. Rea certificate No. 5 for 100 shares of the par value of $10,000; to Stilson Hutchins certificate No. 19 for 50 shares of the par value of $5,000; to Hutchins and Ewing, for Stilson Hutchins, certificate No. 20 for 50 shares of the par value of $5,000; to Theodore Laveille certificate 21 for 50 shares of the par value of $5,000, issued to Blunt and Insley,

and by them returned and subsequently issued to H. I. Christoph, and by him returned, and reissued to H. Lowry by certificate No. 122, dated June 27, 1872; to Frank Gregory, certificate No. 22 for 50 shares of the par value of $5,000; this certificate remains in the hands of the president subject to the order of Gregory; to Gerard B. Allen and Co. 25 shares; the agreement was the same as in the other cases, but
60 the certificate was not issued and remains in the hands of the president; a special condition was made in the case of Mr. Allen that his company should pay their subscription of 25 shares of the par value of $2,500 in work at their shops in building machines, and on account of which subscription and payment said Allen was to receive of Blunt and Insley other 25 shares the same as their codefendants; defendant Oliver B. Tilley, being a partner of the firm of Gerard B. Allen and Co., to John Kupferle 25 shares which stands in substantially the same condition as that of his codefendant Allen; to A. C. Ellithorpe certificate No. 23 for 50 shares of the par value of $5,000, leaving 30 shares of the 830 shares only to be accounted for, and of which your orator is not fully informed; the facts and evidences of which are with the defendants.

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61 December 18th, 1871; that they signed the contract with Whipple and Dickerson December 23rd, 1871, as president and secretary of said company, and that they have signed all the certificates of stock of said company issued to Blunt and Insley and to the subscribers of said stock from first to last, inclusive, the first certificate (No. 1) for 125 shares, having been issued and signed by Charles P. Chouteau as president, and Stilson Hutchins as secretary, to Charles P. Chouteau for his subscription, upon his note for $12,500, as aforesaid, December 25th, 1871, and the last certificate (No. 127) for 50 shares was signed, issued, and delivered in the same way to H. I. Christoph Feb. 8th, 1873, as the act of the corporation, and in pursuance of the general plan of the scheme of fraud and conspiracy aforesaid.

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43. That defendant, Gerard B. Allen is a manufacturer of machinery in St. Louis, Missouri, and was at the time of these transactions; and
62 said Allen manufactured a number of these machines under the so-called Whipple and Dickerson patents, and under the direction of Whipple and Blunt, and upon plans, drawings, and specifications furnished by Whipple and Blunt in pursuance of the general plan and common design of Whipple and Dickerson, their agents, assignees, and confederates in the scheme of fraud and conspiracy in violation of the partnership of Whipple and Ambler, and of the trust aforesaid, and pending the suit of Ambler vs. Whipple and Dickerson aforesaid, and with full knowledge and timely notice of all things in relation thereto.

That said Allen kept no books, memoranda, or accounts of these trans-

actions, or if he did they have been fraudulently concealed or destroyed, so that all evidence in relation to the manufacture of said machines at his shops have been removed out of the way, and all evidence in relation thereto, as far as your orator can learn, must now depend on the memory of the witnesses to the transactions sought to be established, and pertinent to the issue in this cause, or in any other cause of action depending thereon.

That at the time of these transactions said Allen had full knowledge of Whipple and Dickerson's and Blunt and Insley's designs to cheat, swindle, and defraud your orator, and with such knowledge said Allen gave
63 to these conspirators aid, character, and support in their unlawful dealings with the partnership and trust property aforesaid, with the intent of extending the fraud and of destroying the rights of your orator, with a full knowledge of the trust, the suit, and of all things in relation thereto.

§ 44. That in the investigation of the facts in relation to the formation and proceedings of said company to obtain testimony in the cause of Ambler vs. Whipple and Dickerson aforesaid, your orator learns that it is claimed there were no books of said company except the stock-book which he found in the hands of the president, Charles P. Chouteau, and that the memory of some of the defendants and directors of said company, of facts in connection with the formation and business of said company, was remarkably deficient in respect to the most important transactions, such as the payment of large sums of money, especially in the cases of Peck and Rea, who had no remembrance of the $10,000 paid by each in their notes or by cash subscriptions to said stock, but remarkably distinct as to matters of trivial importance, as will appear by a copy when produced of the testimony taken in said cause of Ambler vs. Whipple and Dickerson,
64 of Charles P. Chouteau, Gerard B. Allen, Charles H. Peck, and George H. Rea, which copy will be produced at the hearing and prayed to be made a part hereof and considered in this cause, marked Ambler's Exhibit No. 19.

45. That it was understood and carried out in the organization, or immediately thereafter, of said "Missouri Liquid Fuel and Illuminating Company," that one of the incorporators of said company should resign, and that defendant Edwin Harrison should be elected and become a director in said company, and this plan was carried out accordingly, and Edwin Harrison did become a director, stockholder in said company, with a full knowledge of all the facts and of all things in relation thereto.

46. And hereupon, your orator charges specifically that said company was organized and conducted in all the proceedings, and in all its transactions, clandestinely and secretly, with the object and *and* intent to swindle and defraud your orator and deceive the public, and to prevent any proper examination of the books, papers, or records of said company, and that all the proceedings and business of said company were so managed as
65 to mislead and prevent any person from obtaining the true facts in connection therewith, or to prevent such an exhaustive examination of its affairs as would lead to the facts in the case; and so that all the material facts should depend upon memory, which may be convenient or treacherous, as will appear from the exhibits of testimony aforesaid, and that these defendants combined, confederated, and conspired together in the forma-

tion and incorporation of said company, and in the proceedings attending the same, both previously and subsequently thereto, and with Whipple and Dickerson, knowingly to aid and abet them, Whipple and Dickerson, in the scheme of fraud and conspiracy set on foot by Whipple and Dickerson at the shops of Pettit and Dripps, in Washington City aforesaid, touching and in and about the patent property covered by and chargeable with the trust and pending the suit of Ambler vs. Whipple and Dickerson, in the supreme court of the District of Columbia, with full
66 knowledge and timely notice of the trust of the breach *of the trust* by Whipple and Dickerson, and of said suit and all things in relation thereto. It appears that Whipple, the chief conspirator, was to be covered by defendants Blunt and Insley, Blunt and Insley acting for themselves, and as the agents of Whipple and Dickerson, as will appear by the copy of an affidavit filed April 16th, 1873, in this court by Stilson Hutchins in the case of the Manufacturers' Bank of Chicago against Stilson Hutchins, upon suit brought to enforce the payment of one of the notes given by him for stock in the "Missouri Liquid Fuel and Illuminating Company," as aforesaid. A copy of said affidavit is filed herewith and prayed to be made a part of this bill, marked Ambler's Exhibit No. 20.

47. That all the sales made of said property, or any part thereof, to James G. Blunt and Merritt H. Insley, or either of them, by Whipple and Dickerson, or either of them, were made as from one confederate or conspirator to another, and were intended so to be; that they were and
67 each of them was, made with the intent to swindle and defraud Ambler of his just rights in the patent and trust property pretended to be conveyed, and were for the purpose of alienating the franchise and trust property of Ambler, of complicating the title thereto, and to seize and appropriate the proceeds and assets derived and to be derived therefrom, to their own use and to the use of their confederates and coconspirators, and which facts were well known to all of these defendants when they united and combined with Whipple and Dickerson in the furtherance of this scheme of fraud and conspiracy against your orator, as herein set forth, and that they and each and every of them did become in law and fact active participators and conspirators therein and parties thereto from its inception ab initio at the shops of Pettit and Dripps, in Washington City as aforesaid, and so continue therein.

48. That these defendants have taken no steps whatever, legal or otherwise, to recover said property, or the proceeds thereof, or to stay Whipple and
68 Dickerson in the pursuit and furtherance of the fraud in the waste of the proceeds of the trust, the sequestration of the assets, in reckless speculations in railway construction companies, in building and operating railroads of doubtful value, and otherwise well known to these defendants, nor have they taken any step or proceeding to arrest this outrageous swindle and scheme of fraud against your orator, or otherwise to protect your orator in his rights, or to relieve themselves from the consequences of their own acts, but to the contrary of this be in known to your honors that they have covered and shielded said Whipple in every possible manner. They have pleaded immunity for him and for themselves, and still persist in so doing; they have become and are now the custodians of his secrets, which they have withheld and concealed, and do now withhold and conceal from your orator; they assert, set up, and maintain his theory of defense in the suit of Ambler

vs. Whipple and Dickerson, though well known that such defense was not sustained in that cause, but was decided against by the unanimous de-
69 cision of the Supreme Court of the United States in said suit upon final trial upon the merits and all the issues in said cause.

49. That the fraudulent acts and doings charged against these defendants, and each and every of them in their collusion, association, and extended combinations with Whipple and Dickerson to swindle and defraud your orator of his property and the proceeds thereof, form one united and connected scheme of fraud for the purpose of carrying into effect and execution the combination and conspiracy first set on foot by Whipple and Dickerson, in Washington City, in September, 1869, and in which defendants Blunt and Insley united and joined soon thereafter for the promotion and furtherance of the same, and for this purpose and enlarge the fraud and combination against your orator, the defendants in this bill united and combined with Whipple and Dickerson to form and fraudulently incorporate the "Missouri Liquid Fuel and Illuminating
70 Company" by articles of association signed and executed by some of the defendants; and for this purpose and to further the scheme th'y fraudulently availed themselves of, and used the corporate laws of the State of Missouri to aid them in perpetrating, extending, and enlarging the fraud in the State of Missouri, and to give the scheme the force and dignity of a public act, and all of which was done in violation and fraud of the rights of your orator, and the equitable title of your orator, and in violation of the trust aforesaid; that said company was formed and incorporated as aforesaid, and for the purpose aforesaid, and said company became in fact then and there and thereafter an integral part and confederate branch of said scheme and conspiracy and fraud for all the purposes thereof, and subject to all the penalties and liabilities incurred on that account by each and all of its individual shareholders and corporate members, and by reason thereof the incorporators of said company are
71 held and lawfully bound to the same extent as Whipple and Dickerson are held and bound by the decision of the Supreme Court of the United States, and by decree of the supreme court of the District of Columbia in said cause, and your orator submits the premises considered, the issue of a lawful enforcement of contribution, which can in any way interfere with or delay the right and equities of your orator in this behalf.

§ 50. That Thomas S. Dickerson was not made a party to the suit of Ambler vs. Whipple and Dickerson, by reason of his having stolen and pirated the invention of your orator, but because he had knowingly connected himself with Whipple and aided him in the scheme of fraud on Ambler, in violation of the trust as fully set forth in said cause, and your orator submits to your honor that the issue he desires, and claims the lawful right to submit in this cause, is precisely the same as the issue made and tried in the former case of Ambler vs. Whipple and Dickerson as against
72 Dickerson. That is: Have these defendants so far knowingly connected themselves with Whipple, or Whipple and Dickerson, and aided him or them in promoting and furthering the frauds on Ambler that they cannot resist Ambler's right to one-half of the patents Nos. 95665 and 102662 and of the profits made and to be made out of them as damages in this cause of action?

51. That at the time of these transactions, on or about December, 1871, Whipple and Dickerson had no commercial standing, as reliable and responsible business men, but to the contrary of this, be it known to your honors that they were known to be bankrupt, worthless, and utterly irresponsible and without any commercial credit whatever, which fact was well known to the defendants. That Merritt H. Insley was a banker and in a condition to know the commercial character and standing of persons with whom he had dealings. And the same knowledge applies to Charles P. Chouteau, Edwin Harrison, Jules and Felix Vallé, Gerard B. Al-
73 len, Charles H. Peck, Alvin B. Filley, and others of the defendants who are commercial men and whose business it is in their daily life to learn and know of the responsibility and character of the men with whom they have to deal, and who have well-recognized facilities therefor, and whose daily custom it is so to do. Upon which your orator submits that more than ordinary caution was due from these defendants in dealings with Rodney M. Whipple and Thomas S. Dickerson in relation to instructions, discoveries, and patent property and the right, title, and interest therein, of so large and important a character as to involve the payment of so large a sum of money and the foundation and incorporation of a new company with a capital of $500,000 paid-up stock to manufacture and use the same; and in view of the commercial standing and character of these defendants, it is unreasonable to suppose, your honors, that they were not put upon proper notice for the examination of the title of the vendors, so
74 easily traced in the books of transfers of patents in the Patent Office of the United States with the defendants' habits and daily commercial life and known facilities for the examination thereof, that they did not do so before making said purchase of Blunt and Insley and Whipple and Dickerson, December 23d, 1871, and that they had, therefore, no notice, as these defendants may pretend, of the trust, of the fraudulent breach of the trust, and of your orator's rights and equitable title in the trust property. That the irresponsibility of Whipple and Dickerson, well known to these defendants, made it more imperative upon the defendants to provide for the faithful execution of the trust, and the protection of the share of your orator in any fund derived through them from the trust property or the proceeds thereof, and to secure the same from improper appropriation and use for the benefit of your orator.

52. That the association and co-operation as charged in the bill
75 of such persons as Charles P. Chouteau, Edwin Harrison, Jules and Felix Vallé, Gerard B. Allen, Oliver B. Filley, and their co-defendants, with Whipple and Dickerson, have given them, and still give them, their associates, colleagues, and confederates, great influence, strength, and prestige in their schemes of fraud upon your orator to fraudulently sell and dispose of State and Territorial rights in said patents, and to alienate the franchise and trust property aforesaid; that some of these defendants are well-known experts and dealers in the manufacture of iron and steel, and their opinion has great weight in relation to the subject-matter of these patents with the public in all parts of the United States; that the extensive reputation, known wealth, commercial character, and high standing in commercial circles of some of these defendants, and the exhibitions, illustrations, and publications these defendants have made, caused to be made, or permitted to be made, or acquiesced in being made of said

76 invention, and by the facts of purchase, the formation of a joint-stock company with so large a capital, and the continued association of these defendants with said Whipple and Dickerson, their associates, colleagues, and confederates, have been made the means and auxiliaries to the immense sales and fraud perpetrated upon your orator by them, Whipple and Dickerson, their agents, assignees, confederates, and coconspirators.

53. And hereupon your orator charges that said Whipple and Dickerson have used the foregoing facts of sale to the defendants and the prestige of the same to further their schemes of fraud upon your orator by enormous sales of grants, rights, privileges, transfers, and continued alienation of the trust property amounting to several millions of dollars, as appears by the public records and other evidences of the sales made in this behalf; and with a full knowledge of all the facts these defendants have

77 in no way attempted to stop these sales or protect the share of your orator in the trust property or the proceeds and assets derived therefrom, but these defendants have knowingly acquiesced, assented, and assisted therein, to the great and irreparable damage and injury of your orator, and in fraud of your orator's rights, and in violation of the trust aforesaid and pending said suit.

54. That the defendants Whipple and Dickerson, by their counsel, the Hon. Matt H. Carpenter, petitioned the Supreme Court of the United States for a rehearing of the cause, which was denied, as will be seen in the second opinion of Mr. Justice Miller, which is filed herewith, marked Ambler's Exhibit No. 20½, and prayed to be made a part of this bill.

55. That said defendants, and each and every of them, are chargeable with notice of said decisions of the Supreme Court of the United States, and held and legally bound in law and fact thereby.

78 56. That your orator has prosecu' said suit against said defendants in the supreme court in the District of Columbia and the Supreme Court of the United States, continuously from January 4th, 1870, to the present time, and he his now prosecuting the same at great labor and expense. That your orator has, in fact, heretofore expended in and about said cause a sum of money exceeding fifty thousand dollars. That by reason thereof, and the great sacrifice your orator has been required and compelled to make, to vindicate his rights in this behalf, your orator has been impoverished and nearly ruined, whilst these fraudulent trustees and those who have fraudulently co-operated, assisted, and conspired, confederated, and combined with them have received large sums of money and vast profits, amounting to millions of dollars; and among these wrong-doers your orator charges the defendants in this bill; that during the poverty and

79 distress of your orator in the prosecution of his just rights in this behalf, the fraudulent trustees, their coconspirators, colleagues, and confederates, including the defendants, have been in the possession and enjoyment of his franchise and his property.

57. That the Supreme Court of the United States granted to your orator and issued the mandates of said court to the supreme court of the District of Columbia, Feb'y 1st, 1875, and the supreme court of the District of Columbia, in obedience to said mandate, entered its decree in said court Feb'y 5th, 1875, a copy of which is filed herewith and prayed to be made a part of the bill, marked Ambler's Exhibit No. 21.

58. That Whipple abandoned the partnership of Whipple and Ambler

upon the very threshold of success in the invention invented by your orator, and fraudulently took Dickerson into his confidence and formed the new partnership of Whipple and Dickerson, dehors and in every sense
80 adverse to the partnership of Whipple and Ambler, which had been duly created in due form of law, and in bold violation and fraud of the rights of your orator, as well known to all and every of these defendants in time to have saved themselves harmless in these transactions.

59. Whipple made no sales or conveyances in the name of Whipple and Ambler, or on account thereof, under the memorandum of agreement of May 24th, 1869, and of the trust assignment of May 25th, 1869, as he was bound and therein obligated to do in good faith and in fair dealing. He did not hold out said partnership in dealing with said invention and said patents or either of them, but on the contrary of this, be it known to your honors, that said partnership of Whipple and Ambler was ignored and abandoned by said Whipple in dealing with said invention and patents, and said Whipple made his first sale and conveyance and all subsequent sales and conveyances of said invention and patents in the name and firm style of Whipple and Dickerson, or in the names of their assignees, confederates, and coconspirators, and in fraud of your orator as the rightful bene-
81 ficiary to the one-half share of your orator in the property and franchise covered by the trust, and these defendants dealt with said Whipple and took said property and franchise chargeable with the trust, having full knowledge and lawful notice of the state of things; and your orator submits to your honors that Whipple can assert, set up, and maintain no right in law or equity under said partnership of Whipple and Ambler, or as a partner therein, or as the agent of Ambler in the premises, for the use and benefit of the defendants to this bill, which partnership and agency he has so ruthlessly outraged for over six years, and no right can be assumed, asserted, or maintained or set up for him by his confederates, including the defendants in this bill, which he could not assert, maintain, or set up for himself. That these defendants have no right whatever to any benefit or protection from the partnership of Whipple and Ambler, which they have never acknowledged and have always ignored, and against which and the rights of your orator they have been in defiant hostility for years of litigious controversy between Whipple and your orator in the Patent Office and in the courts.

That all the dealings and transactions of these defendants with Whipple and Dickerson have been dehors and adverse to the partnership of Whipple and Ambler, and any effort or undertaking to invoke the
82 partnership of Whipple and Ambler as has heretofore been done in this court, or to shield themselves thereby or thereunder from the consequences of their collusion, confederation, combination, and conspiracy with Whipple and Dickerson against your orator at this late day, and after suit is brought against them for the wrong and injury done through any pretended rights, claims, or contribution they may pretend to have against their chief confederate and coconspirator, Rodney M. Whipple, your orator submits to your honors, is a violation of every principle of equity and justice, an assumption of pretended rights and claims unwarranted by the facts, unsustained by the authority of law, and in direct conflict with the decision of the Supreme Court of the United States in the case of Ambler vs. Whipple and Dickerson, as to Dickerson

in this cause specially submitted as the foundation in law upon which this suit is brought, and further, because the facts show that there is no lawful enforcement of a contribution in this behalf between said Whipple and either of the defendants to this bill.

60. That Whipple did not act in the name of Whipple and
83 Ambler, or for their use and benefit, or for the use and benefit of Ambler as his partner and the beneficiary of the trust, but he did act adversely thereto in all these fraudulent and scandalous transactions, and with the intent to deceive, swindle, and defraud your orator of his rights in the partnership and the trust, and for the use and benefit of Whipple and Dickerson, then associates, confederates, and coconspirators, and in which they have been illegally and fraudulently aided and abetted knowingly by these defendants and each and every of them, to the great damage and injury of your orator.

61. That Whipple did not have the complete jus disponendi, nor was he sui juris, in all respects or in any respect whatever since the commencement of the suit of Ambler vs. Whipple and Dickerson in the supreme court of the District of Columbia aforesaid, January 4th, 1870, in and about these transactions, nor did he even pretend so to act, and it cannot legally be pretended for him, for the benefit of these defendants, or
84 for any other purpose, and certainly not for the purpose of defending him and associates in swindling and defrauding Ambler of his rights in the partnership and trust property.

62. That Whipple did not have the "full, absolute, complete, and exclusive power and authority to sell and convey" the property covered by and chargeable with the trust, unlawfully and fraudulently, by virtue of agreement of May 25th, 1869, as was shamefully pretended before your honors in the former suit, unless Whipple, in face of the decision of the Supreme Court of the United States, can be purged of all fraud and intent to defraud your orator in the transactions and dealings with the partnership and trust property, and unless the very existance of the records and facts in relation thereto in said cause can be stricken, expunged, and obliterated from the supreme court of the District of Columbia and all knowledge and notice thereof forever destroyed. That it has heretofore, in this court, been presented as a defense in the action of Ambler vs. Chouteau et al., in equity, No. 710, that Whipple had the right
85 the full, absolute, complete, and exclusive power and authority under the said agreement of Whipple and Ambler of May 25th, 1869, to do the very things he did do, and that he would have been derelict in his duty to Ambler if he had not done the very things he did do, or, in the language of Mr. Shepley, in said former suit No. 710 in this court, "Ambler had put it into Whipple's hands for the very purpose of doing the very things that Whipple did, and he would have been derelict in his duty under the agreement if he had not made these sales," and that, too, precisely in the manner and form and for the very purpose he did make them; and your orator submits to your honors that if this is not suggestio falsi, *in* would be impossible to determine what constitutes false suggestion in pleadings; and it was further contended that Ambler "assented to the passing of the title to Whipple's vendees, and therefore the rights of Ambler to the property, when sold, were extinguished;" and further, that Ambler
86 was willing to relinquish his rights in the property for the share

of the proceeds, which he had confidence in Whipple to believe he would pay him, as appears by the brief of Glover and Shepley, solicitors for the defendants in the case No. 710 of this court, referred to on page 16, a copy of which is filed herewith and prayed to be made a part hereof, marked Ambler's Exhibit No. 22, and this pretense of the rights, powers, and duties of a trustee, in dealing with trust property, was solemnly made in open court, in said cause No. 710 then pending before this court, in relation to the subject-matter of this trust, brought by your orator, in relation to these transactions, and dismissed for want of parties and without prejudice upon demurrer and without trial upon the merits and in the place and stead of which this suit is instituted de novo, and this defense is made in the face of the fact of the then pending (and now depending) suit of Ambler vs. Whipple and Dickerson in the supreme court of the District of Columbia in relation to this very partnership and trust property, and of the decision of the Supreme Court of the United
87 States in said cause, establishing the trust, the breach of the trust, the fraud, and conspiracy in Whipple and Dickerson, and determining the rights of Ambler in the patents or trust property and the profits arising and to arise therefrom against Whipple, as direct trustee, and against Dickerson (without his consent and against his will, as he was not a party to the original contract of Whipple and Ambler), as a constructive trustee, or a trustee by operation of law, and as a conspirator with Whipple, because he had knowingly aided and abetted Whipple in his (Whipple's) fraud on Ambler, as the defendants have and each and every of them has done, to the great damage and injury of your orator.

That all of Whipple's acts in relation to the partnership and trust property are now, and have been the subject of litigation, as will appear by the records of said court since January 4th, 1870, and of all of which it is charged and cannot be denied that these defendants, and each and every of them, had full knowledge, and due, lawful, and timely notice, and of all things in relation thereto.

88 63. That in the furtherance of this scheme of fraud and conspiracy against the rights and interest of your orator, Thomas S. Dickerson and Rodney M. Whipple, without the knowledge and consent of your orator, and with the privity, knowledge, and consent of these defendants, surrendered to the Government of the United States, on the 14th day of March, 1873, the said letters patent of the United States Nos. 95665 and 102662, and the same were duly cancelled by the Patent Office of the United States, and they were extinguished by law. That this further act of fraud and wrong was done by the said Dickerson and Whipple, and with the concurrence of these defendants to further complicate the rights and title of your orator in the property and franchise which was the subject-matter of said patents, and your orator charges that the said act of fraud was done with the privity, knowledge, and assent of these defendants, and for the purpose aforesaid. And, on the 14th day of March,
89 1873, the said Dickerson and Whipple made application for reissues of said letters patent Nos. 95665 and 102662 ex parte, to which your orator charges privity, knowledge, and assent against these defendants, and this further act of fraud and conspiracy was for the purpose of further complicating the rights of your orator, and to enable said Dickerson and Whipple to set up on their own behalf, and on behalf

of these defendants, an adverse title to your orator obtained secretly, clandestinely, and fraudulently, and without your orator's knowledge or consent, and reissues Nos. 5326 & 5327, or pretended reissues of said letters patent Nos. 95665 and 102662 were granted on said application, and issued March 18th, 1873, pendente lite said suit of Ambler vs. Whipple and Dickerson. Copies of drawings and specifications of said reissues are filed herewith and prayed to be made a part of this bill, marked Ambler's Exhibit Nos. 23 & 24.

64. That the invention set forth and described in said letters patent, Nos. 95665 and 102662 has been used, made, and vended by the defendants in the eastern district of Missouri. That the invention
90 has been largely advertised, illustrated, and commended to the public through the public press by the defendants; that it was made a distinguishing feature of the St. Louis fair of 1871 by these defendants, and illustrated and described in the public papers at the time, and the names of some of the defendants therein set forth, and with the indorsement and commendation of the superintendent of the Laclede Rolling Mills, the property of Chouteau, Harrison and Vallé, of St. Louis, Missouri, made individual defendants in this bill. That all of these defendants have represented to the public from time to time the great value and importance of the invention in the manufacture of iron and steel, crockery, glass, lime, and other commodities, and for generating steam for running machinery, steamboats, and locomotives, and for heat and light generally, and in place of coal for gas to illuminate cities, towns, villages, and houses, and for some of these purposes it has been used and successfully applied by these defendants, as is fully shown by their advertisements, and by the *the* publications aforesaid, some of which publications will be produced at the bar
91 at the hearing, and the public have been invited to witness its operation from time to time by these defendants; and upon these evidences of its value in the arts and sciences and the improvements of the country large sales have been made as aforesaid, and it has been largely purchased by various persons in different portions of the United States under the control, direction, and management of these defendants or some of them acting in association and co-operation with said Whipple and Dickerson, and their associates, colleagues, and confederates, and with full knowledge of your orator's rights and equities therein, and without the knowledge or consent of your orator, and without, in any way, on the part of these defendants, putting forth any effort whatever to save to your orator any part or portion of your orator's share therein, or in any to protect the same for the use and benefit of your orator or to recover any part thereof.

65. Your orator further says, and charges the fact to be, that from time to time he has notified the defendants, or some of them, and among the number Charles P. Chouteau, Gerard B. Allen, Oliver B. Filley,
92 and Charles H. Peck, by circulars and letters, of your orator's legal rights and equitable title and interest in the mention and discovery which is the subject-matter of said letters patent Nos. 95665 and 102662, and of the suit pending in the supreme court of the District of Columbia of Ambler vs. Whipple and Dickerson, in and about the subject-matter of this bill, and in the matter of interference in the Patent Office declared between the application of Ambler and the issued patents of Dickerson and Whipple, Nos. 95665 and 102662, and your orator has endeavored to

place before these defendants the liability to your orator they incurred in dealing with Rodney M. Whipple, his associates, assignees, and colleagues and confederates in and about the premises, but without avail.

66. That large stock companies have been formed and incorporated under the laws of Pennsylvania, Illinois, and Missouri, solely upon these patents, in the cities of Philadelphia, Chicago, and St. Louis, and, as your orator has been informed and believes, in many other places,
93 and millions of dollars in money, property, stocks, and assets have been realized by said *said* Whipple and Dickerson and their associates, confederates, and colleagues, who have knowingly and fraudulently assisted and co-operated with them, and among the number of persons who have thus knowingly and fraudulently aided and abetted and co-operated with them in the frauds on your orator, and in the breach of trust aforesaid, your orator charges the defendants in this bill.

67. That defendant, James G. Blunt, became, without the knowledge or consent of your orator, the agent, partner, confederate, and coconspirator of Rodney M. Whipple during the pendency of said suit of Ambler vs. Whipple and Dickerson in the supreme court of the District of Columbia, No. 1873, equity doc. 10, aforesaid; and your orator charges that he has so continued to be the partner of Whipple, and that he is now the partner of Rodney M. Whipple in and about the premises and the subject-matter of this suit, the letters patent Nos. 95665 and 102662, and the invention therein described and set forth, and the proceeds, property, money, and assets derived therefrom, with full knowledge and no-
94 tice of the matters set forth, shown, averred, alleged, and charged in this bill; that he has both secretly and openly maintained his relations with said Whipple from, on, or about March 28th, 1870, to the present time, and that he still continues the same without the consent of your orator, and to your orator's damage and injury.

68. That said Blunt made his first purchase of Whipple on or about March 28, 1870, in and to a part of the franchise and trust property aforesaid, as set forth and described in letters patent No. 95665, by an assignment from Thomas S. Dickerson, Rodney M. Whipple, and George K. Clark, to whom Whipple had previously conveyed, for the right, privilege, and license of manufacturing lime in Cook County, Illinois, for the sum of $4,000; and April 5th, 1870, Thomas S. Dickerson and Rodney M. Whipple sold and conveyed to James G. Blunt and Merritt H. Insley the right for the State of Kansas, and Jackson County, Missouri, reserving the right of railroads of Missouri to enter Jackson County, for the sum of $20,000, as appears by the records of the transfers of patents in liber N^{12}, page 413.

95 69. Your orator humbly prays your honor's attention to the following schedule of sales made by Whipple and Dickerson, and Whipple, to James G. Blunt and to Blunt and Insley. First. Under letters patent No. 95665, Thomas S. Dickerson and Rodney M. Whipple sold to James G. Blunt, March 28th, 1870, Cook County, in the State of Illinois, for $4,000. Recorded April 6th, 1870, liber N^{12}, page 412.

Thomas S. Dickerson and Rodney M. Whipple sold to James G. Blunt and Merritt H. Insley, April 5th, 1870, the State of Kansas, and county of Jackson in Missouri, for $20,000. Recorded April 6th, 1870, liber N^{12}, page 413.

Thomas S. Dickerson and Rodney M. Whipple sold to James G. Blunt and Merritt H. Insley, April 21st, 1870, the State of Missouri for $35,000. Recorded April 22nd, 1870, liber X[12], page 12.

Thomas S. Dickerson and Rodney M. Whipple sold to James G. Blunt and Merritt H. Insley, December 23d, 1870, the State of Missouri, for $35,000. Recorded Jan'y 13th, 1872, liber C[15], page 249.

Rodney M. Whipple sold to James G. Blunt, December 10th, 1872, the State of West Virginia for $1.00. Recorded March 3d, 1873, liber G[16], page 89.

96 Rodney M. Whipple sold to James G. Blunt, January 13th, 1873, the State of Alabama for $1.00. Recorded April 14th, 1873, liber N[16], page 425.

Rodney M. Whipple sold to James G. Blunt, January 13th, 1873, the State of Texas for $1.00. Recorded April 14th, 1873, liber N[16], page 426.

Rodney M. Whipple sold to James G. Blunt, January 13th, 1873, the State of Louisiana for $1.00. Recorded April 14th, 1873, liber N[16] page 426.

Second. Under letters patent No. 102662, Thomas S. Dickerson and Rodney M. Whipple sold to James G. Blunt, March 28th, 1870, the State of Illinois for $40,000. Recorded April 6th, 1870, liber N[16], page 412.

Thomas S. Dickerson and Rodney M. Whipple sold to James G. Blunt and Merritt H. Insley, April 5th, 1870, the State of Kansas, and county of Jackson, in Missouri, for $20,000. Recorded April 6th, 1870, liber N[12], page 413.

Thomas S. Dickerson and Rodney M. Whipple sold to James G. Blunt and Merritt H. Insley, April 21st, 1870, the State of Missouri for $35,000. Recorded April 22nd, 1870, liber X[12], page 12.

Thomas S. Dickerson and Rodney M. Whipple sold to James G. Blunt and Merritt H. Insley, Dec. 23rd, 1871, the State of Missouri for $35,000. Recorded Jan'y 13th, 1872, liber C[15], page 249.

Rodney M. Whipple sold to James G. Blunt, Dec. 10th, 1872, the State of West Virginia for $1.00. Recorded March 3rd, 1873, liber O[16], page 89.

97 Rodney M. Whipple sold to James G. Blunt, Jan. 13th, 1873, the State of Alabama for $1.00. Recorded April 14th, 1873, liber N[16], page 425.

Rodney M. Whipple sold to James G. Blunt, Jan'y 13th, 1873, the State of Texas for $1.00. Recorded Apr. 14th, 1873, liber N[15], page 426.

Rodney M. Whipple sold to James G. Blunt, Jan'y 13th, 1873, the State of Louisiana for $1.00. Recorded Apr. 14th, 1873, liber N[16], page 428.

70. It will be observed by your honors by the preceding schedule of sales, and by the transcript records of the Patent Office, that Rodney M. Whipple sold and conveyed to James G. Blunt the following States for the consideration of one dollar, viz: West Virginia, Alabama, Texas, and Louisiana, under letters patent No. 95665, and West Virginia, Alabama, Texas, and Louisiana, under letters patent No. 102662.

§ 71. This fact evidences clearly the close and confidential relations between Rodney M. Whipple and James G. Blunt, their co-operation,

collusion, conspiracy, fraud, confederacy, and partnership therein and in and about the premises, and the full, and complete, and perfect knowledge of said Blunt in relation to the trust and breach of the trust by Whipple and Dickerson, as aforesaid, and the rights of your orator therein, and of your orator's equitable title in the franchise and trust property afore-
98 said, and your orator charges upon defendant Blunt the facts so to be.

71½. Your orator avers that he has not, nor never had, possession or control of the said conveyances and transfers, and that the same are now in the possession or control of the defendants hereto, or some of them, and therefore the plaintiff cannot set forth the particulars of such conveyances and transfers more fully or perfectly than as hereinbefore mentioned, but your orator claims leave to refer thereto when the same shall be produced, and to produce certified copies of them and each and every one of them, and to refer to them when produced.

72. Your orator avers that said Whipple and parties associated with him have squandered and wasted the proceeds and assets derived from the trust property by appropriating the same to his own use and diverting the same from its legitimate purposes and uses not contemplated by the trust in large, wild, and reckless speculations in lands, railroads, stocks, and other property of doubtful value, instead of sharing with your orator, as he was in duty bound to do without let or hindrance on the part of these defendants, but in
99 which these defendants acquiesced and joined with the fraudulent trustee, secretly, fraudulently, and clandestinely, with full knowledge and notice of the same, and they have kept the same a secret from your orator, whose has from time to time endeavored to obtain information from them for the protection of your orator's share of said property, but in which your orator has always failed, the defendants utterly refusing to have any communication (except as they have been so required by law) with your orator in relation to the letters patent aforesaid, the invention and subject-matter of said trust—and they have not made any effort whatever to protect the trust-property, or the assets thereof, or the proceeds derived therefrom for the use and benefit of your orator, or to protect the loss of your orator's share of any and all sales made by Whipple and Dickerson and persons known by these defendants to be their associates, abettors, and confederates in the stupendous scheme of fraud upon the rights of your orator, or to recover the same.

They have made no effort whatever to stop said Whipple from
100 squandering and wasting the vast sums of money, stocks, and assets derived from the sales of said franchise, that he has received and squandered and wasted. And now after having received millions of dollars from said sales, and having the use and exclusive employment and enjoyment thereof during the pendency of said suit, said Whipple is now reported to be bankrupt and worthless, without any pecuniary responsibilty whatever, and your orator herein charges the fact so to be; and the same facts of squandering and waste of bankruptcy and worthlessness and want of pecuniary responsibility applies to his associate and tool, Thomas S. Dickerson, who was not only his coconspirator, but partner and confederate; and with these bad men and wrong-doers, these fraudulent trustees, conspirators, and confederates, your orator finds these defendants associated and linked by their own acts, as shown by the public records, with a full

knowledge of the same, and so continue to remain without taking any legal steps to relieve themselves of the relations they bear to them and your orator. They have pretended to treat this fraud and swindle of your
101 orator as though they had no part nor lot whatever therein. They have ignored your orator's just rights, and made themselves the trustees of your orator by their own acts and conduct in the premises, and by their association, co-operation, and dealings with the trustee of your orator, after he had committed to their knowledge the fraudulent breach of the trust reposed in him in good faith by your orator, in the franchise which was the joint property of said Whipple and your orator, as your orator has shown to your honors, by records, facts, and evidences which cannot be questioned or contradicted.

§ 73. That the public records of the Patent Office of the United States show sales made, inclusive from September 24th, 1869, and including all intervening sales to April 8th, 1874, a sum amounting, in the aggregate, to $7,591,067 by Thomas S. Dickerson and Rodney M. Whipple, and which detail of sales is presented to your honors in part to show the court something of the character and extent of the breach of trust and fraud perpetrated upon your orator, and the influence and strength your orator has to meet and contend against in the long, vindicative, and acrimonious litigation through which he has passed since January 4th, 1870, to the present time, in
102 and about the subject-matter of the suit in vindication of his just rights in this behalf, and to charge the defendants with such knowledge and notice of the same as to render them liable and bound in law and equity to the payment and full discharge of your orator's share and just rights and equities therein, unless *unless* these defendants can, against the evidence and facts submitted, purge themselves of all knowledge and lawful notice of the shameful, nefarious, and scandalous transactions charged and averred in this bill. A schedule of said sales is filed herewith, marked Ambler's Exhibit Nos. 10 and 11, and a certified transcript thereof from the records of the Patent Office will be produced at the bar at the hearing.

§ 74. That upon the hearing of the cause upon a trial of seven or eight days of Ambler vs. Whipple and Dickerson, in the special equity term of the supreme court of the District of Columbia, in or about the month of May, 1871, after the hearing and rendering of the decree against your orator in said cause by the chancellor, The National Republican, a daily paper, published in the city of Washington by Wm. J. Murtagh, one of the grantees at the time of Thomas S. Dickerson and Rodney M.
103 Whipple, as will appear by the transcript of records as aforesaid, for the nominal consideration of $25 for one-half of the State of Indiana, published and issued twenty-one columns, including one extra, which set out only the case and argument made by the defense, and the decree of the court, and, as your is informed and believes, these papers were extensively circulated by Rodney M. Whipple, Thomas S. Dickerson, James G. Blunt, and their associates, colleagues, and confederates, throughout the country, for the purpose of influencing public opinion against your orator and your orator's rights in said suit, and to aid and assist in pending and subsequent negotiations of sales and alienation of the partnership and trust property, and your orator so charges the facts to be, and that said negotiations and sales were made accordingly, and to these

defendants subsequently thereto and with a full knowledge thereof by these defendants of the said publication and the facts attending the same.

That the said decree of the chancellor in the foregoing paragraph set forth was reversed by the Supreme Court of the United States at
104 the October term, 1874, by the unanimous decision and opinion of the court rendered in said cause, and delivered by Mr. Justice Miller, November 30, as hereinbefore set forth; that the long and continued litigation aforesaid forced upon your orator to obtain the rights in the premises, by the breach of trust of said Whipple, with the aid and co-operation of said Dickerson, and the fraudulent conveyances, transfers, and grants aforesaid, with the privity, knowledge, aid, and assistance fraudulently of these defendants, have exhausted over five years of the life of the patent aforesaid; and said Whipple and Dickerson, their partners, colleagues, grantees, vendees, and confederates have placed upon the record of the Patent Office of the United States titles complicating the title and adverse to the rights and equitable title of your orator in the trust property and franchise conveyed, as described and set forth in the letters Nos. 92687, 95665, and 102662, and the pretended reissues aforesaid, with the privity, knowledge, assent, aid, and assistance of these defendants, and with the intent to scheme and defraud, and which acts of fraud and co-operation therein of these defendants have destroyed confidence in the invention, the title and safety of bona fide purchasers in the patents
105 and rights thereunder, and by such means these defendants, in furtherance of the scheme of fraud and conspiracy aforesaid, have greatly retarded and hindered your orator in his efforts for the introduction of said invention into public use. That most of the States and Territories have been sold as aforesaid to individuals, and by them transferred to incorporated companies in different States of the United States, merging the entire patent trust and partnership property and franchise of your orator into so many parts and subdivided parts as to necessitate a multiplicity of suits, and exhaustive, onerous, expensive, and extended litigation throughout the country, by which your orator has sustained damages to the amount of over $4,000,000. And your orator avers that he did not learn or know of the fraud, collusion, and confederation of these defendants with said Whipple and Dickerson, in violation of the trust aforesaid, until subsequently to the purchase by Blunt and Insley aforesaid, and by other defendants of the State of Missouri, from James G. Blunt and Merritt H. Insley, and the contract of agreement by these defendants with
106 Whipple and Dickerson pendente lite said suit No. 1873, equity doc. 10 of the supreme court of the District of Columbia, fully set out in this bill, and until some time in the month of December, or thereafter, 1871, and during this time he has been in continuous litigation in this behalf.

§ 76. That your orator has from time to time notified these defendants of his legal rights and equities, and has often appealed to their conscience and sense of common justice in this behalf for some terms upon which and by which your orator's rights and share in the trust property should and might be protected, but without avail, while these defendants have had constant intercourse, association, and fellowship with Whipple and Dickerson, their colleagues and confederates, and others to your orator unknown, in and about the premises, secretly, and clandestinely and fraudulently, and with

a full knowledge of the trust, the fraudulent breach of the trust, by Whipple and Dickerson, and they have so continued to have meetings, intercourse, association, and fellowship with Whipple and Dickerson, and their associates in and about the premises, secretly, clandestinely, and
107 fraudulently, from which your orator is excluded. That your orator has p'essed upon these defendants a meeting with your orator for consultation from time to time, and he has reiterated his proper request for such meeting of your orator, with all the defendants but without avail; and the efforts of your orator have been attended with avoida'ce, evasion, and denial, until your honors, your orator having no other remedy than that set forth in this bill against these defendants, again makes his way to the bar of equity. All of which acts, and doings, and premises of said defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury, injustice, and oppression of your orator in the premises.

§ 77. That your orator avers that he has received no part of the large sales that have been made as aforesaid, by said Whipple and Dickerson, their partners, agents, associates, colleagues, or abettors, or otherwise in this behalf, and the share of your orator remains due and unpaid. That the same defendants have, from time to time, laid out and invested the said franchise and trust property in the purchase of bonds, stocks, and other securities, and appropriated the proceeds, money, and assets to their own use and behoof, and in their own names, and in the names of their
108 colleagues friends, and confederates in fraud and violation of the trust aforesaid, in breach of the trust, with a full knowledge of the trust, of the breach of the trust, and without your orator's knowledge, privity, or con , and to your orator's damage and injury by way of accumulation for their own purposes, and in a manner not directed by the trust.

§ 78. That these defendants have, or had in their possession, custody, power, or control, certain books, papers, documents, letters, telegrams, writings, memoranda, contracts, agreements, publications, notices, and circulars, and know the contents thereof, whense it will appear that they were not purchasers without notice, and which will show when produced, that they had full, lawful, and timely notice of the trust, the fraudulent breach of the trust, and of your orator's equitable title in the franchise conveyed, of the breach of trust, and suit aforesaid.

§ 79. That during the years of this controversy and litigation in the Patent Office and in the courts it would be difficult, if not impossible, to trace and bring out all the fraudulent acts and unlawful doings of these defendants in the prosecution of their nefarious and secret designs, all of which have been carefully guarded by them from your orator in the interest of the conspiracy by each of the individual members thereof,
109 now comprising a large number of persons in all parts of the country, and embracing ramifications and details so extended as to necessitate onerous and expensive litigations in nearly every State and Territory in the United States; and your orator does not pretend in this bill to unmask and lay bare all of the unlawful acts and doings of these defendants in the scheme of fraud and conspiracy aforesaid, and in which they all have and maintain a common interest and design in furtherance of the same, and meet and correspond with each other in relation

thereto, secretly, clandestinely, and fraudulently, and for the purpose of a united and common defense against the rights and equities of your orator in any cause of action he may have against them, or either of them, and to this end they driven and compelled to hold the chief conspirator, Whipple, purged of all fraud in dealing with the partnership and trust property aforesaid, and to contend that he had a right to do the very things he did do by virtue of his contracts with your orator, and this
110 defense is made in the face of the decision of the Supreme Court of United States, which declares the transactions of Whipple and Dickerson, in relation to these patents, and to the partnership and trust property a scheme of fraud against your orator, and said decision is law unto the court.

80. That it is and has been throughout the long litigation of your orator in his suits touching these transactions, the open boast of these defendants and their associates and confederates that they had the money and influence to defeat your orator in any suit he might bring to vindicate or establish his rights in these matters and they have used and they are still using the proceeds and assets of this partnership and trust property, the property proceeds and assets seized by these defendants as confederates with Whipple and Dickerson to unlawfully *to* defend themselves and their coconspirators against the established and adjudicated rights of your orator; that your orator has for years been contending in the courts and in the
111 Patent Office for these rights, and during all this time he has been met by Whipple and Dickerson, Blunt and Insley and their associates, confederates, and coconspirators, including the other defendants in this bill, with the proceeds, assets, and profits derived from the partnership and trust property aforesaid in the hands of these defendants, and he is now meeting the same in this way and for the same purpose, namely, the protection and defense of these defendants and coconspirators with Whipple and Dickerson in the scheme of fraud aforesaid and by the use of the money and proceeds derived therefrom, and your orator hereinafter prays an injunction against these defendants from the further use of the same, and pending this suit for a provisional injunction on account thereof, and to protect the same from the unlawful use thereof by the wrongdoers.

81. That your orator charges upon these defendants, and each and every of them, full knowledge, and due and timely notice of all the acts and transactions, and of each and every act and transaction set forth and averred in this bill, either by actual fact or by construction of law; and your
112 orator specially charges against these defendants, and each and every one of them full knowledge and due and timely notice, active and constructive of, first, the partnership of Whipple and Ambler, by memorandum of agreement of May 24th, 1869, and of the assignment in trust created by Ambler in Whipple, May 25th, 1869.

Second. The issue of letters-patent to Whipple and Ambler, No. 92687, July 13th, 1869.

Third. The experiments of Whipple and Ambler at the shops of Petit and Drips, in Washington, D. C., in August, 1869.

Fourth. The seizure of the apparatus by Rodney M. Whipple at said shops in September, 1869.

Fifth. The formation of the scheme of fraud and conspiracy at said shops by Whipple and Dickerson, on or about September 4th, 1869, and the fraudulent partnership and conspiracy growing out of the same.

Sixth. The furtherance of the same by Whipple and Dickerson by the surreptitious and fraudulent application of Thomas S. Dickerson for letters-patent by Dickerson as the pretended sole inventor, on the invention of Ambler, aided and abetted by Rodney M. Whipple, the then partner, agent, and trustee of Ambler, September 16th, 1869.

Seventh. The fraudulent assignment of Dickerson to Whipple, September 24th, 1869.

113 Eighth. The scheme of Whipple to buy out the rights of Ambler through the pretended agency of Warrick Martin, in the month of Sept., 1869, and the failure of the scheme by reason of Ambler's refusing to sign the papers prepared for him by the then conspirators, Whipple, Martin, and Dickerson.

Ninth. The experiments of Whipple and Dickerson with the Whipple and Ambler machine, both at the shops of Petit and Dripps in Washington, and subsequently at the shops of Wm. T. Duval, in Georgetown, D. C.

Tenth. The issue of letters-patent, No. 95665, October 12th, 1869, to Dickerson and Whipple, as the sole assignees of Thomas S. Dickerson.

Eleventh. The sales and transfers made by Whipple, and by Whipple and Dickerson previously to January 4th, 1870, as the same appears by the public records in the Patent Office exhibited in this cause by your orator, namely, Ambler's Exhibits Nos. 10 and 11.

Twelfth. The suit brought by Ambler January 4th, 1870, in the supreme court of the District of Columbia, entitled A. J. Ambler vs. Rodney M. Whipple and Thomas S. Dickerson, equity doc. 10, No. 1873, of said court, and of all the exhibits, facts, proofs, and pleadings therein set forth, and of all things in relation thereto.

Thirteenth. The surreptitious and fraudulent application of Dickerson and Whipple for other letters-patent on the invention of Ambler,

114 and the issue of letters patent No. 102662, May 3rd, 1870, thereon pending, the suit aforesaid in relation to the subject-matter thereof.

Fourteenth. The connection of defendant James G. Blunt with the scheme of fraud and conspiracy in or about the month of March, 1870, in Washington City.

Fifteenth. The connection of Merritt H. Insley in the same scheme in or about the month of April, 1870, also in the city of Washington, both of whom it is charged were fully informed by Whipple and Dickerson of the scheme when they connected themselves therewith, and they have been throughout the whole of these transactions and they are still connected therein. They have been the direct promoters and aiders of the conspiracy in all its details and ramifications, from the commencement thereof by them to the present time, and are still, and in all of which they have directly participated and shared with the chief conspirators, Whipple and Dickerson, and do still so participate and share with them, and all of which was well known to the other defendants named in this bill when they entered this conspiracy.

Sixteenth. The formation of each of the incorporated stock companies named and set out in this bill, 1. The Keystone Liquid Fuel Company of Pennsylvania; 2. The Liquid Fuel Company of New Jersey;

115 3. The Missouri Liquid Fuel and Illuminating Company. 4. The Illinois Liquid Fuel and Illuminating Company. 5. The National Gas and Iron Company, incorporated under the laws of the State of Illinois, August 1st, 1873, by Wm. Windom, of Minnesota; John H. Rice, of Maine; Edward F. Folger, of Maryland; I. M. Tebitts, of Kentucky; R. M. Whipple, of Illinois; James G. Blunt, of Kansas, and George K. Clark, of Illinois, under general act. 6. The Chicago Railway Construction Company; and 7, the purchase of the charter of the Chicago and Illinois River Railroad Company, which was purchased and constructed by the conspirations for and in the interest of the conspiracy, and from the proceeds and assets derived therefrom and growing out of the partnership, and trust property aforesaid, and by the unlawful use of the rightful dues and equities of your orator, and the assets and profits derived therefrom.

Seventeenth. The interference in the Patent Office and the three trials and the decisions thereon in favor of your orator. 1. Feb. 3rd, 1872. 2. May 9th, 1872. 3. Aug. 21st, 1872, and awarding priority of invention to Ambler over both the patents to Dickerson and Whipple.

Eighteenth. The issue to Ambler thereon of the patent No. 131240,
116 Sept. 10th, 1872, as the first original and sole inventor of the invention therein described and set forth.

Nineteenth. The ex parte and fraudelent surrender by Dickerson and Whipple, pendente lite said suit of letters patent Nos. 95665 and 102662, and the application for reissues thereon March 14th, 1873; and,

Twentieth. The issue of reissued letters patent Nos. 5236 and 5237, March 18th, 1873.

82. That these defendants knowing the precarious and doubtful character of Rodney M. Whipple have, without taking any steps to protect your orator, or to prevent it, stood by and looked on while Rodney M. Whipple, the chief conspirator, was alienating and sequestrating the property which had come into his hands through the scheme of fraud and conspiracy aforesaid, and as growing out of the partnership and trust property aforesaid, and by fraudulently going into bankruptcy to relieve himself as far as he could do so, pending said suit of Ambler vs. Whipple and Dickerson, by a fraudulent use of the bankrupt laws of the United States, and to defeat the execution of the judgment and decrees obtained by your orator against him in the suit of Ambler vs. Whipple and Dickerson aforesaid, and by reason thereof, and of the premises herein fully and at large set
117 forth, your orator prays the intervention of this court, and for damages as alleged and prayed for in this bill.

83. That your orator charges and sets forth as his damages in this cause of action the full amount of every sale, and any and all sales, grants, licenses, and transfers made by Rodney M. Whipple, and Thomas S. Dickerson, and by Blunt and Insley, and by all of these defendants, and by each and every member of said scheme of fraud and conspiracy whenever and wherever made, from the commencement of the same and during the same to the present time, and of every sale and of all sales inclusive, made for value, making a sum in the aggregate, as shown by the public records and by other evidences thereof, to the full amount of eight millions of dollars, of which your orator has been cheated, defrauded, and damaged, to the extent of one-half, with the interest thereon from the date of each transaction, and further to the extent of $500,000, for time, labor, trouble, and

costs of the litigation and controversy in and about the partnership and trust-property aforesaid, and the costs of this suit.

PRAYER.—The premises considered, your orator prays that he be awarded damages to the full extent of the aggregate amount and
118 sum total of which he is shown or may be shown to have been cheated, swindled, and defrauded by these defendants, each and every of them, namely, Charles P. Chouteau, Edwin Harrison, the heirs and legal representatives of Jules Vallé, deceased, Felix Vallé, Gerard B. Allen, Charles H. Peck, George H. Rea, Theodore Laveille, Charles P. Warner, Stilson Hutchins, the heirs and legal representatives of John Kupferle, deceased, Frank Gregory, Oliver B. Filley, James G. Blunt, Merritt H. Insley, and Albert C. Ellithorpe, and by their associates in the scheme of fraud and conspiracy aforesaid, including as such associates, Rodney M. Whipple and Thomas S. Dickerson, and their agents, confederates, and coconspirators, to the full extent of the damages named and set out in the last preceding paragraph of this bill, and that your orator be adjudged and decreed damages accordingly against these defendants, severally and jointly, for and on account of the wrong and injury done as aforesaid, and for the costs of this suit.

2. That your honors may further declare and decree that said defendants, and each and every of them, did receive and do now hold as confederates and coconspirators with Rodney M. Whipple and Thomas S. Dickerson
119 and as coconspirators with them for the benefit of your orator to the extent of one-half of all the rights, franchises, benefits, privileges, sales, and receipts arising from said patents Nos. 95665 and 102662, or either of them, to the full extent as adjudged and decreed by the Supreme Court of the United States ,and the decrees of the supreme court of the District of Columbia founded thereon, and set out in this bill, as to Rodney M. Whipple and Thomas S. Dickerson by reason of the schemes, of fraud and conspiracy aforesaid as the damages of your orator in this behalf, and that the full amount and sum of each and every sale made, and the aggregate and sum total of the same by Rodney M. Whipple and Thomas S. Dickerson, their agents, partners, colleagues, confederates, grantees, and assigns, and of any sum and of all sums of money, proceeds, property, or assets of every kind and character that have come to the hands, of Whipple and Dickerson, their agents, colleagues, partners, confederates, grantees, and assigns in and about the premises by reason of the trust aforesaid—the fraudulent breach of trust, of the fraudulent acquiescence, aid, assistance, and co-operation of these defendants, and of each and
120 every one of them therein, as fully and entirely as the said Whipple and Dickerson, their agents, partners, colleagues, confederates, and assignees, or either of them, are held and bound by the judgment and decrees aforesaid in the case of Ambler vs. Whipple and Dickerson, as damages in this cause.

3. Your orator further prays for a full, complete, and perfect discovery of said defendants and each and every of them, of all their transactions with Rodney M. Whipple and Thomas S. Dickerson and with each other, touching and relation to said partnership and trust property aforesaid, touching and relation to said patents Nos. 95665 and 102662, and of reissues obtained thereon Nos. 5236 and 5237, and of said Missouri Liquid Fuel and Illuminating Company and of all matters and things pertaining

thereto may be fully made known, stated, and set forth in the answer of these defendants, and each and every of them to this bill, so that a full, complete, and perfect understanding may be had of its incorporation and management and all things in relation thereto.

121 4. That the said Charles P. Chouteau, Edwin Harrison, the heirs and legal representatives of Jules Vallé, deceased, Felix Vallé, Gerard B. Allen, Charles H. Peck, George H. Rea, Theodore Laveille, Charles P. Warner, Stilson Hutchins, the heirs and legal representatives of John Kupferle, deceased, Frank Gregory, Oliver B. Tilley, James G. Blunt, Merritt H. Insley, and Albert C. Ellithorpe, their counsellors, attorneys, solicitors, officers, partners, colleagues, agents, or servents may be restrained and prohibited in the usual form by injunction from and out of this honorable court from proceeding further with any dealings with the said partnership and trust property aforesaid or intermeddling therein or with the proceeds thereof or of the letters-patents, franchises, and transfers aforesaid or either of them and of the property, money, proceeds, or assets derived therefrom or in any way received on account thereof, or of making any sale, transfer, or disposition of any bonds, stocks, or securities, or the disbursement of any moneys whatever, now in the hands or in the power and under the control of said defendants or either

122 of them during the pendency of this suit and until the further order of this court.

And in the meantime an order ad interim be granted your orator restraining and prohibiting the said defendants as aforesaid from intermeddling with said property, money, bonds, stocks, securities, proceeds, or assets, arising from said property, or that has heretofore arisen from the same, and especially of any money, stock, capital, working capital, or other assets of said company, or any other manner in and about the premises until the further order of this court.

5. That the defendants, and each and every of them, be ordered to deliver up to this honorable court, or to such persons as may be appointed by the court to receive and hold the same, and all the effects and property of said trust in their and in each of their possession, control, or power, and any and all moneys, property, bonds, stocks, securities, proceeds, and assets, of every kind and character in their hands or either of their

123 hands, in the hands of their partners, agents, servants, trustees, or confederates' control or power. Also in the hands of the president, treasurer, agent, servant, or officer of the "Missouri Liquid Fuel and Illuminating Company," derived or arising from any sales, purchase, contract, agreement, grant, privilege, right, or license, transfer, or conveyance of any and every kind and character, or in any way derived or arising from said franchise and patents Nos. 95665 and 102662, and the invention therein described and set forth.

6. That an account be taken before a master in chancery, or other proper person appointed by the court of all the sales, agreements, contracts, transfers, rights, privileges, and grants of every kind and character made by Rodney M. Whipple and Thomas S. Dickerson, their agents, servants, trustees, partners, assignees, or confederates, from and including the first sale and conveyance made to and including the time of taking the

124 same, including each and every sale made of every kind and character as shown by the public records and otherwise, and that inter-

est be calculated with half yearly rests upon your orator's share of the same.

7. That in making the inquiries and taking the accounts required for the purpose of this suit any of the proceedings had in said suit of Augustin I. Ambler against Rodney M. Whipple and Thomas S. Dickerson, in this bill set out, which can properly and usefully be adopted, may be adopted and used accordingly; and that any of the records of the Patent Office of the United States, of sales, agreements, transfers, conveyances, grants, and privileges of any and every kind and character in and about the premises may be used and adopted in this behalf as evidence of the matters and things therein set forth.

8. That the defendants, and each and every of them, may set forth
125 a list or schedule and description of every deed, assignment, grant, right, privilege, agreement, contract, or conveyance of every kind and character—books, accounts, letters, papers, advertisements, illustrations, circulars, publications, or anything relating to the matters aforesaid, or either of them, or wherein or whereupon there is any note, memoranda, or writing relating in any manner thereto, which are now or ever were in their or either of their possession, control, or power, and may deposit the same in the office of the clerk of this honorable court or other proper person appointed by the court for the usual purposes and otherwise; that the said defendants, and each and every of them, may account for such as are not in their possession, power, or control.

126 9. And your orator humbly your honors that the damage to your orator for the wrong and injury done in this behalf by the defendants may be duly considered, and that an account be taken thereof before the master, or other proper person appointed by the court, and that your orator, upon the final hearing, be allowed, adjudged, and decreed damages therefor; and your orator humbly prays your honors that an issue, in the discretion of the court "quantum damnificatus," may be directed to issue from and out of this honorable court to a master in chancery, or, in the discretion of the court, to a jury to determine the damage sustained by your orator by reason of the fraudulent and illegal acts and doings complained of against the defendants in this bill.

127 10. To the end, therefore, that the said Charles P. Chouteau, Edwin Harrison, the heirs and legal representatives of Jules Vallé, deceased, Felix Vallé, Gerard B. Allen, Charles H. Peck, George H. Rea, Theodore Laveille, Charles P. Warner, Stilson Hutchins, the heirs and legal representatives of John Kupferle, deceased, Frank Gregory, Alvin B. Filley, James G. Blunt, Merritt H. Insly, and Albert C. Ellithorpe, and their confederates, when discovered, may, upon their several and respective corporal oaths, to the best and utmost of their respective knowledge, remembrance, information, and belief, full, true, and direct answer make, paragraph by paragraph, to all and singular the matters aforesaid, and that as fully and particularly as if the same were herein repeated, and that they and each and every of them was distinctly interrogated thereto, and may, if they can, show why your orator should not have the relief prayed for in this bill.

128 And may it please your honors to grant unto your orator the writ or writs of subpœna to be directed to the said Charles P. Chouteau, Edwin Harrison, the heirs and legal representatives of Jules

Vallé, deceased, Felix Vallé, Gerard B. Allan, Charles H. Peck, George H. Rea, Theodore Laveille, Charles P. Warner, Stilson Hutchins, the heirs and legal representatives of John Kupferle, deceased, Frank Gregory, Oliver B. Filley, James G. Blunt, Merritt H. Insley, and Albert C. Ellithorpe, thereby commanding them, and each and every of them, at a certain time and under a certain penalty therein to be limited, to personally appear before this honorable court to answer the premises and abide by and perform such order and decree as may be passed herein.

And that your orator may have such further and other relief in the premises as the nature in the circumstances in this case may require, and to your honors shall seem meet, and for general relief.

And your orator will ever pray, etc.

A. J. AMBLER,
Plaintiff, in Person.

T. W. B. CREWS,
Of Counsel.

129 STATE OF MISSOURI,
City and County of St. Louis, ss:

I, A. J. Ambler, complainant in the annexed and foregoing bill by me subscribed, do solemnly swear that I have read the same and know the contents thereof, and that the facts therein stated, as upon my personal knowledge, are true; and that the facts therein stated upon information and belief, I believe to be true.

A. J. AMBLER.

Subscribed and sworn before me this 8th day of August, A. D. 1877.
M. M. PRICE, *Clerk*,
By A. P. SELBY, *D. C.*

130 EXHIBIT R. M. W. and A. I. A., No. 1.

Memorandum of agreement this day made and entered into by and between R. M. Whipple and A. I. Ambler, of the city of Chicago, in the county of Cook, and State of Illinois.

Whereas we, the said R. M. Whipple and A. I. Ambler, have invented a new and useful improvement in the manufacture of gas from petroleum, the machine or apparatus for which we name Whipple and Ambler's steam petroleum gas generating apparatus, and for which we are about to make application for letters-patent of the United States of America and other countries;

And whereas we each desire to secure to the other one undivided one-half of the same, and the proceeds thereof, in this country and in all foreign countries in which it may be found desirable or advantageous to obtain letters-patent:

Now, this indenture witnesseth, that for and in consideration of the sum of one dollar, each to the other paid in hand, the receipt of which is hereby acknowledged, we, the said R. M. Whipple and A. I. Ambler, mutually agree and hereby bind and obligate ourselves to and with each other, and covenant each with the other, to be governed by and faithfully adhere to the following articles, to wit:

ARTICLE FIRST.—This is a limited copartnership for the purposes herein named and expressed.

ARTICLE SECOND. The name or firm-style of the same shall be Whipple and Ambler.

ARTICLE THIRD.—R. M. Whipple shall have the exclusive and entire "business management" of the same, so as to include the introduction of said invention to public use, and to secure as far as possible the adoption of the same, both in this country and in all other countries; and for which purpose, and all and singular the purposes incident thereto, the said R. M. Whipple shall have full and ample power and authority, and is hereby granted by said Ambler full power and authority to act for him in the premises, to sign his name, and make his seal to any instrument, and all instruments of writing needful and necessary to carry out the object and intention of this agreement, as fuly and entirely as the same may be done by the said Ambler if personally present at the doing thereof; and the said A. I. Ambler hereby ratifies and confirms all and singular whatsoever may be legally and lawfully done in and about the premises.

ARTICLE FOURTH.—The said Whipple shall keep suitable books and accounts of all transactions done, and render quarterly accounts thereof, commencing on the first day of October, 1869; and said books and accounts shall at all times be open to the examination and inspection of either party to this agreement.

ARTICLE FIFTH.—Neither party shall be held liable in law or equity for expenses incurred or money expended in and about the business, or in any way on account thereof; but any sum and all sums of money expended on account thereof shall be paid and discharged from and out of any income, proceeds, or receipts derived therefrom or on account thereof.

ARTICLE SIXTH. That any and all letters-patent that may be obtained in this country, and all other countries, by virtue of said invention, or by reason of any improvement on or modification of the same by either party, shall be owned by and between the parties to this agreement, in equal shares, to wit: one undivided one-half to each, and all proceeds of sale or sales of any and every kind and character shall be shared by and between the parties hereto, share and share alike.

ARTICLE SEVENTH.—That said R. M. Whipple, in consideration of the premises, and each of them, agrees, and hereby obligates himself to undertake, and he hereby does undertake, the "business management" of this invention, and of the letters patent or patents that may be issued thereon or granted by reason thereof in this country and all other countries, and to advance such sum or sums of money as may be necessary to
131 demonstrate the entire practicability of the invention. To obtain all patents, and to secure, as far as possible and profitable, the introduction and adoption of the same for the best interest of the parties hereto in such manner and by such means as may be in accordance with the judgment and at the discretion of the business manager hereby constituted.

ARTICLE EIGHTH.—And the said A. I. Ambler, in consideration of the premises, and each of them, hereby binds and obligates himself to the full exercise of his mechanical skill and ingenuity to perfect and render practical the said invention in all its details to the extent of his power, cunning, and inventive capacity, and to give the same his personal attention when called

upon to do so by the "business manager" to secure the results of mechanical and practical success; provided always the means are furnished to enable him so to do, either under the advance contemplated in this agreement, or from the common fund. And the said Ambler is hereby fully authorized to employ such assistance in the mechanical department of this business as he may require for the purposes aforesaid, and which shall be paid for as part of the expenses.

ARTICLE NINTH.—The parties to this agreement hereby pledge each to the other the most perfect good faith in all and singular the ramifications and details thereof, and bind themselves to observe the same to the full end of the term or terms for which said letters-patent or patents may be granted. In testimony whereof we, R. M. Whipple, and A. I. Ambler, have hereunto signed our names and affixed our seals at the city of Washington, in the District of Columbia, on this 24th day of May, A. D. 1869.

RODNEY M. WHIPPLE. [SEAL.]
AUGUSTIN I. AMBLER. [SEAL.]

In presence of—
W. R. AMBLER.
WARRICK MARTIN.

U. S. PATENT OFFICE.

Received for record May 24th, 1869, and recorded in liber O, page 454 of Transfers of Patents. In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[SEAL.] SAMUEL S. FISHER,
Commissioner of Patents.

DISTRICT OF COLUMBIA,
County of Washington:

On this 24th day of May, A. D. 1869, before me, the subscriber, a notary public in and for said county, personally appeared Rodney M. Whipple and Augustin I. Ambler, who are personally known to me to be the individuals described in and who executed the annexed memorandum of agreement, and they acknowledged the same to be their respective act and deed.

Given under my hand and notarial seal this 24th day of May, A. D. 1869.

[SEAL.] JOHN S. HOLLINGSHEAD,
Notary Public.

(Indorsed:) 1054. Ambler's Exhibit No. . Memorandum of agreement between Whipple & Ambler, May 24, 1869.

132 AMBLER'S EXHIBIT NO. 2.

The United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of an assignment recorded in liber U[11], page 114.

In testimony whereof, I, Ellis Spear, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this sev-

enteenth day of November, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the one hundredth.

[PAT. OFFICE SEAL.] ELLIS SPEAR,
Acting Commissioner.

Know all men by these presents, that, whereas, I, A. I. Ambler, of the city of Chicago, in the county of Cook and State of Illinois, and joint owner and tenant in common with R. M. Whipple, of the city, county, and State aforesaid, of a certain improvement in the mode of manufacturing or generating gas from petroleum, which we name "Whipple and Ambler's Steam Petroleum-Gas-Generating Apparatus," for which we are about to make application for letters-patent of the United States and other countries;

And whereas, it is desirable that the said R. M. Whipple should have the full, absolute, complete, and exclusive power and authority to sell and convey the same, or any part thereof, this indenture witnesseth:

That for and in consideration of the sum of one dollar to me, the said A. I. Ambler, in hand paid by the said R. M. Whipple, the receipt of which is hereby acknowledged; and for and on account of other divers good and valuable considerations me thereunto moving, the same being more fully set forth in the "articles and covenants of a memorandum of agreement" made and executed by and between the said R. M. Whipple and A. I. Ambler on the 24th day of May, A. D. 1869, and duly filed for record in the Patent Office of the United States on the day and date of its execution; and for the purpose of more fully carrying into effect the articles, provisions, and covenants of said agreement, and each and every of them, and the object and intention thereof, I, the said A. I. Ambler, do hereby sell, assign, convey, and set over unto the said R. M. Whipple, all and singular, my entire right, title, and interest in and to said invention, and the letters-patent or patents that may be granted thereon or issued on account thereof, together with all and singular the improvements I may make thereon and the modifications thereof.

The same to be held and enjoyed by the said R. M. Whipple, for the uses and purposes aforesaid, to the full end of the term or terms for which said letters-patent or patents may be granted.

In testimony whereof, I, A. I. Ambler, have hereunto signed my name and affixed my seal, at the city of Washington, in the District of Columbia, on this twenty-fifth day of May, A. D. 1869.

AUGUSTIN I. AMBLER. [SEAL.]

In presence of—
WARRICK MARTIN,
W. R. AMBLER.

DISTRICT OF COLUMBIA,
County of Washington, ss:

On this 25th day of May, 1869, before me, the subscriber, a notary public in and for said county, personally appeared the annexed named, Augustin I. Ambler, and acknowledged the annexed assignment to be his act and deed.

[NOTARIAL SEAL.] JOHN S. HOLLINGHEAD,
Notary Public.

thus saturating the gas. Within this generator or cylinder we fit, steam-tight, a suitable follower, or "steam piston-head," so called, to press up the petroleum by means of the steam which enters at the bottom through the steam-pipe I from the boiler. To this generator, and from the top, we connect, by means of a suitable gas-pipe, a receiver at the bottom, as shown at G and G. This receiver is a cylinder, having a "follower" or piston-head, and rod, the rod passing out at the top to a bearing head or cap, having guides at each end. Upon this cap we place any given weight that may be required to give force and head to the gas. We also mark the sides of the guides, to indicate the exact amount of gas in the receiver. This rod, being connected with the follower within the cylinder, shows at all times the exact amount of gas in the receiver, and the force the amount of weight required.

From this receiver there runs a suitable main-stem pipe to the fire-box of the engine or locomotive, where the gas may be divided into as many streams as the demand requires. The drawings show, it will be noticed, a jet or burner at and for each flue, and several for the crown-sheet. The flame of these jets and the heat accordingly may be readily governed by the engineer or operator by means of a stop-cock, which should be always within his easy reach. In the main stem, and between the receiver and the fire-box, we place a self-acting valve, so constructed as to close in case of the return of gas toward the receiver from any cause, so as to exclude the possibility of danger from returning gas on fire.

136 The description by letters is as follows: A represents the inside of the cylinder of the generator; B, the steam-space; C, the piston-head or follower, to compress the petroleum by means of the steam which enters the cylinder through the pipe I and below the piston-head. D is the dome or top of the generator. D′ shows the sponges in the dome, for straining the gas. D″ shows the cap of the water or steam space at the base of the dome, the same to be fitted steam tight over the top of the steam-space, as shown. E shows the several compartments or spaces between the perforated plates. E′ shows an air-chamber between the upper plates and the space thereof. We place sponges, gravel, sand, and such other porous material and substances as may be required, for the purpose of straining the petroleum from the gas, to rarefy and purify the same. F F are the perforated plates forming the compartments or spaces, upon the top of which we place wire netting, to prevent any sediment from passing down into the petroleum. G is the pipe connecting the top of the generator with the bottom of the receiver. H is the feed-pipe, for the supply of petroleum into the cylinder A. This can be done by means of a suitable force-pump, so as to constantly keep up the supply of petroleum as the same is used up by generating into gas. I is the steam-pipe, admitting the steam into the cylinder below the follower C. I′ is a branch steam-pipe, admitting the steam into the steam-space around the cylinder containing the petroleum, for the purpose of heating the same. J is the blow-off pipe for the cylinder, and a suitable pipe should be used for the steam-space for the same purpose. K is the receiver for holding the supply of gas. K′ is the blow-off pipe of the receiver. To this receiver there should be attached a suitable safety-valve, to release the gas at any given pressure desired. M is the cap of the receiver, which must be fitted on steam-tight, having standards cast on the same, with suitable guides to

steady the piston-rod and the weights upon the top of the same. N is the standards, with guides for steadying the piston-rod; O, the piston-rod. P is the cap on top of piston-rod, having at each end a groove to fit the tongues or guides in the standards N, to steady the rod, as aforesaid, and for such weight or weights as may be necessary to secure the pressure required. P′ shows the weights on the cap N. Q shows the fire-box; Q′, the air-jets, having a sliding cover, which may be moved at pleasure, so as to admit the quantity of air necessary for the proper burning or consumption of the gas to generate the heat required. R shows the main stem of the pipe, with branches to conduct the gas into the fire-box, and to the proper location or position therein for burning. R′ is the flues of the boiler. S shows the self-acting valve shutting off the return gas. This may be a common clapper-valve; the current of gas flowing out to the burners will open the same, and the return of the current will close it. S′ shows a stop-cock, by which means the flow of gas to the burners is opened, regulated, and shut off. This cock should be placed within easy reach of the engineer or operator.

With this description, and by the aid of the drawings, the mechanic will readily understand the same, and be enabled to construct and use the apparatus.

In the compartments between the perforated plates in the generator we state that we place in the lower one sponges, or other suitable porous material or substances; in the next, gravel and sand; in the next, sponge; and the next we leave as an air-chamber, above which we place the sponges in the dome.

This combination of sponges, gravel, sand, and sponges with the perforated plates and wire netting we apprehend will satisfactorily purify, rarefy, and strain the gas, and so as to render it available for both heat and light.

The generator being supplied with petroleum by means of the feed-pipe, the steam is let into the steam-space by means of the pipe and stop-cock communicating with the boiler, and as soon as the petroleum is sufficiently hot (which will be in a few minutes) to begin to generate the gas, steam-pressure is let onto the follower at I, by means of the stop-cock and pipe, and the follower is forced up against the petroleum, its globulæ is compressed, and the gas escapes up and through the perforated plates, netting, gravel, and sponge, or porous substances referred to. This combination of perforated plates, wire netting, gravel, sand, and sponges with the air-chamber, as shown, is intended to strain and purify the gas in passing from the generator to the receiver, and from the results already attained this desideratum has been fully accomplished to a practical and successful extent. This steam-pressure at the bottom of the petroleum forces up the follower with such force as to separate the gas and cause it to seek an outlet through the pipe into the receiver, and with such head as to drive or force up the follower in the receiver to the top, when the gas is ready for use. This receiver should always be kept full, or at least well supplied, so that fire and steam may be always ready for use without auxiliary means to supply the steam, heat, and pressure to run the apparatus successfully after the first application.

Any suitable gage may be used to indicate the pressure, if desired.

The stop-cocks and valves should be placed so as to be within easy reach of the engineer or runner, and perfectly under his control.

The heat and light from this gas may be applied to the heating and lighting trains of cars by means of suitable pipes and flexible connections between the cars composing the train, and for the head-light to the engine. Each part should be so constructed as to shut off all connection with all other parts either by accident or design, in case of the disconnection of or disaster to the train.

It will be seen that no fire is brought in contact with this ap-
137 paratus, or any part thereof, and hence there is no danger to be apprehended from its use.

This apparatus can be placed upon a tender or water-tank of a locomotive, and gas be generated as fast as used, thus doing away with the enormous expense of coal and wood, and furnishing a cheaper and better fuel, as it has been estimated by the most learned and profound chemists that the heat contained in one barrel of petroleum is equal to thirty tons of coal; but, estimating it at fifteen, the saving would be enormous, and the advantages commensurate.

Having thus described our invention, what we claim as new, and desire to secure by letters-patent, is—

1. The oil-chamber A, piston C, and steam-space B, so arranged as to use steam for the combined purpose of heat and pressure in the manufacture of gas from petroleum, substantially as shown.

2. The generator, as constructed with a steam-space around the cylinder, when combined with perforated plates and porous substances, substantially as shown, and for the purpose set forth.

3. The follower C, when used with a cylinder, constructed substantially as shown, and for the purpose set forth.

4. The receiver K, the follower and rod with the weights and guides, when used in combination with a gas-generator, substantially as shown, and for the purpose set forth.

RODNEY M. WHIPPLE.
AUGUSTIN I. AMBLER.

Witnesses:
W. R. AMBLER,
WARRICK MARTIN.

(Here follow two diagrams, marked pages 138 & 139.)

140 UNITED STATES PATENT OFFICE.

Thomas S. Dickerson, of Chicago, Illinois, assignor for one-half his right to Rodney M. Whipple, of same place. Improvement in the manufacture and application of gas from petroleum, &c. Specification forming part of letters-patent No. 95665, dated October 12, 1869.

To all whom it may concern:

Be it known that I, Thomas S. Dickerson, of the city of Chicago, in the county of Cook and State of Illinois, have invented a new and improved mode of manufacturing or generating gas from petroleum and other oleaginous substances, the same being a new and useful machine for the purpose aforesaid; and I hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings, forming a part of this specification, in which—

Figure 1 represents an elevation of the invention, showing external of gas generator, receiver, and gas-holder, and their connections. Fig. 2 represents a sectional view of generator, receiver, gas-holder, fire-box, gas-burners, and connections taken in line of center.

Similar letters of reference in the several figures indicate corresponding parts.

The nature of my invention consists in producing gas from crude or refined petroleum or other oleaginous substances by means of superheated steam, operating in the manner hereinafter described.

I am aware that many attempts have been made to use petroleum for generating steam, and for producing heat and light, and its large heat-producing power especially recommends it; but the difficulties heretofore met with from the deposits of carbon, and consequent filling up of the pipes, and also in obtaining it in a manageable form, has prevented its use. By the application of superheated steam to form the gas, I prevent the deposition of carbon, and by first producing gas before burning I avoid the difficulties when the liquid is introduced directly into the fire-box or furnace.

The importance of this invention, if successfully applied, cannot be overestimated. The high price of coal, and the utter impossibility of utilizing it so as to get over twenty per cent. of its heating qualities, the wear and tear of machinery by the use of it, and the discomforts of passengers, renders it necessary that some substitute should be used which shall do away with smoke and cinders, and also at all times to keep up a uniform degree of heat. The machine is simple in its construction, and the result almost beyond comprehension.

To enable others skilled in the art to make and use my invention, I will now proceed to describe its construction and mode of operation.

The generator for producing the gas is composed of a cylinder made of boiler-iron, with cast-iron heads, to which the cylinder is riveted. The heads are cast with a hollow or steam-space, and connected with each other through the cylinder by tubes, as shown by letters A A. The space in the cylinder around the tubes, as shown by letters *b b*, is filled with oil. The gas escapes through the head of the cylinder into the dome by tubes, as shown by letters *c c*. The tubes have a screw cut on each end, on which a hollow nut is used, on the outside of the tube, so that it is fastened on both sides of the cylinder-head, thus allowing the gas to escape from the oil-space in the cylinder to the dome above. Around the inside of the cylinder, and between the sides and the tubes heretofore mentioned, is a steam-pipe, as shown by letter D, which passes entirely around the inside of the cylinder, and is perforated in several places to let the steam escape directly into the oil. This is done to force the gas out of the oil as fast as generated, and to prevent the depositing of carbon in the pipes. Letters E E represent the steam-space at each end of the cylinder, which will be seen, allows a complete circulation of the steam. Letter F represents the steam-pipe coming from the engine. Letter G represents the steam-pipe leading into the steam-space E, with suitable stop-cock. Letter *g'* represents the escape-pipe from the steam-space E, for carrying off the condensed steam. Letter H represents a glass tube, which connects with the oil-space *b b*, which runs up on the outside of the cylinder, showing the exact amount of oil in the generator at all times. Letter I represents a pipe for filling the

oil-space *b b*. Letter J represents the pipe leading from the generator to the receiver, marked K. Letter K represents the receiver, which
141 is made of cast-iron, and bored out, and a piston with rod operating from the bottom forces the gas into the gas-holder. Letter L represents the steam-pipe leading from the steam-pipe F, which forces up the piston and compresses the gas. Letter M represents the escape-pipe for the condensed steam under the piston in the receiver. Letter N represents the pipe leading from the receiver to the gas-holder, marked letter O. Letter O represents the gas-holder, which is made of boiler-iron, with the exception of the dome, which is cast and riveted to the top. It can be made of any size, according to its requirements. About the center of the gas-holder I place a perforated iron or tin plate, which is kept in its place by standards resting on the bottom of the gas-holder, and above this, to the base of the dome, I fill with elastic sponges, with a perforated plate at the base of the dome to keep the sponges from going in and filling up the pipe. The sponges are used for the purpose of steadying the gas, and to take up any moisture in the gas, which will condense and pass off through the escape-pipe in the gas-holder, marked *p*. Q represents the gas-pipe leading from the gas-holder to the fire-box, which is provided with suitable stop-cocks, and also a check-valve, which only opens with the pressure of the gas, and closes when the pressure is removed. R represents the fire-box and the burners, showing how the gas is consumed for fuel. S represents the coil in the fire-box, by which the steam is superheated.

The mode of operating the machine is as follows: The steam is taken from the boiler, which passes down through the fire-box R, and through the steam-coil S, into the main steam-pipe, marked F. From there it is let into the steam-space E E, which fills the tubes in the cylinder, which heats the oil in the cylinder, which immediately passes off into gas through the tubes C C into the dome, where it passes, from its own pressure, through the receiver, into the gas-holder, and from there into the fire-box of the engine. Suitable stop-cocks and valves should be placed between all of the connections, which should always be under the control of the engineer.

The object and uses of the receiver are to compress or force the gas into the gas-holder. This is done by having the connection between the generator and receiver, and receiver and gas-holder secured by check-valves, which will only open by direct pressure. The receiver being full, steam is let on under the piston in the generator, which opens the valve between the receiver and gas-holder, and closes the valve between the generator and receiver, thus forcing all the gas in the receiver into the gas-holder. This can be repeated until no more gas can be forced into the gas-holder. This will furnish fuel to fire up with, and this packing of the gas is only used to keep fuel on hand when the machine is not in operation. Thus it will be seen that, after the first application, the machine has plenty of fuel on hand to generate steam.

Having thus described my invention what I claim as new, and wish to secure by letters-patent, is—

1. The generator, composed of steam-spaces E E, tubes A A, oil-space *b b*, steam-pipe D, when used for the manufacture of gas from petroleum and any other oleaginous substance, substantially as shown, and for the purpose set forth.

2. The receiver K with piston and rod to compress the gas, substantially as shown, and for the purpose set forth.

3. The gas-holder, when combined with the use of elastic sponges, substantially as shown, and for the purpose set forth.

4. In the apparatus herein described, the introduction of superheated steam directly into the oil, for the purpose of forcing out the gas as fast as generated, and to prevent the carbonizing in the pipes, substantially as shown, and for the purpose set forth.

5. The use and application of petroleum and other oleaginous substances for generating steam, and for heating and illuminating purposes, by the combination and the process herein described, substantially as shown, and for the purpose set forth.

THOMAS L. DICKERSON.

Witnesses:
J. H. PHILLIPS,
C. C. WILSON.

142 AMBLER'S EXHIBIT NO. .

The United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from records of this office of an assignment in liber D^{12}, page 160.

In testimony whereof I, Ellis Spear, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereto affixed, this seventeenth day of November, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the one hundredth.

{ SEAL OF PAT. OFFICE OF THE U. S. }

ELLIS SPEAR,
Acting Commissioner.

Know all men by these presents, that I, Thomas S. Dickerson, of the city of Chicago, county of Cook, and State of Illinois, am the owner of a certain invention or improvement in the mode of manufacturing gas from petroleum, and for which I made application for letters-patent on the sixteenth (16th) day of September, 1869, by filing my application in the Patent Office at Washington, D. C., for said invention.

Now, this indenture witnesseth, that for and in consideration of the sum of one dollar to me in hand paid, the receipt of which is hereby acknowledged, and certain other good and valuable considerations, I, the said Thomas S. Dickerson, do hereby sell, assign, convey, and set over to Rodney M. Whipple, of Chicago, county of Cook, and State of Illinois, the one undivided one-half of said invention, or any letters-patent that may be issued on the application referred to above in this country, and in all other countries, together with all improvements which I may make thereon, and the modification thereof; the same to be held and enjoyed by the said Rodney M. Whipple, and owned by him to the full end of the term or terms for which said letters-patent or patents may be granted; and I also further agree, that the patent or patents, whenever issued, shall be issued to Rodney M. Whipple and Thomas S. Dickerson; and I further agree, that the name of the above-described machine shall be "Whipple & Dickerson's Gas Generating Machine."

In testimony whereof, I, Thomas S. Dickerson, have hereunto signed my name and affixed my seal, at the city of New York, on this twenty-fourth (24th) day of September, A. D. 1869.

THOMAS S. DICKERSON. [L. S.]

In presence of—
P. W. TENNY.
M. C. SMITH.

STATE OF NEW YORK,
City and County of New York, ss:

On this 25th day of September, 1869, personally appeared before me Thomas S. Dickerson, to me known to be the individual mentioned and described in the foregoing instrument or conveyance, and who acknowledged to me that he executed the same for the purposes therein mentioned.

A. W. TENNY,
Notary Public for the City and County of New York.

(Here follows diagram marked page 143.)

(Indorsed:) 1054. Ambler's Exhibit No. . Assignment of Dickerson to Whipple, Sep. 24, '69.

144 UNITED STATES PATENT OFFICE.

Thomas S. Dickerson and Rodney M. Whipple, of Chicago, Ill. Improvement in processes and apparatus for using liquid fuel for producing heat and light. Specification forming part of letters-patent No. 102662, dated May 3, 1870.

To all whom it may concern:

Be it known that we, Rodney M. Whipple and Thomas S. Dickerson, both of Chicago, in the State of Illinois, have discovered and invented a new and improved mode of generating and manufacturing vapor or gas from oil, petroleum, and other oleaginous and carbonaceous substances, and using the same in combination with superheated steam, vapor, and gas from water, and applying the same to purposes of illumination, heat, and propulsion of machinery, the same being a new and useful invention and apparatus for the purposes aforesaid; and we do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings forming a part of these specifications, in which—

Figure 1 represents an elevation of the invention or machine, showing external of the generator and receiver and their connections. Fig. 2 represents a sectional view of the generator, receiver, fire-box, superheater, and their connections, taken in line of center.

Similar letters of reference in the several figures indicate corresponding parts.

The nature of our invention consists in producing vapor or gas from oil, petroleum, and other oleaginous and carbonaceous substances, by means of superheated steam, and by uniting and using the same with other steam or superheated steam, operating in the manner hereinafter described.

By using superheated steam for vaporizing the oil, the formation and deposition of solid carbon is prevented, by the diffusion and application of heat in such manner and degree as is necessary without decomposing it; and by mixing superheated steam with the vapor or gas thus produced we increase the heat, combine the vapors, produce gases for heating and illuminating purposes, secure perfect combustion, and save largely in the amount of carbonaceous substances required.

To enable others skilled in the art to make and use our invention and apparatus, we proceed to describe its construction and mode of operation.

The generator for producing the gas or vapor is composed of a cylinder made of boiler-iron, with tube-heads riveted to the cylinder at each end. Inside of the tube-sheets, which are turned up about two inches, are cast or wrought iron rings, riveted to the tube-sheets and cylinder. This is done so that the heads may be bolted on to form a steam-space about two inches wide at each end of the cylinder. The tube heads or sheets are connected by copper tubes about five-eighths of an inch in diameter and about one-fourth of an inch apart inside the cylinder. The tubes connecting the steam-spaces are shown by letters A A, Fig. 2. The space in the cylinder around the tubes, as shown by letters *b b*, is filled with the oil. The upper head of the cylinder and the upper tube-sheet are connected and secured by tube-bolts, as shown by letters *c c*, having screws cut at each end, upon which nuts are used to fasten the tube-bolts on each side of the double cylinder-head, and thus allowing the vapor or gas to escape freely through the tube-bolts into the outside case or gas-holder, which is represented by the letters O O. This gas-holder is made of boiler-iron, and is placed around and inclosing the generator, and secured thereto by proper clamps and braces, and is surmounted by a dome or cap made of cast or wrought iron, as represented by letters L L, thus providing space for holding a sufficient amount of the gas or vapor for working purposes. Letter D represents a pipe leading directly into the oil in the generator, and may be used for the introduction of superheated steam from the steam-pipe F, to clean out the machine, and to assist in converting the oil into gas or vapor, and preventing carbonization, as may be required. Letters E E represent steam-spaces between the double heads at each end of the generator, which, being connected by the steam-pipes A A, secures complete circulation of the superheated steam, and exposes the oil in the generator to the greatest practicable amount of heating-surface. Letters F F F represent a steam-pipe leading from the superheater in the fire-box into the dome of the machine. Letters E′ E′ represent a steam-pipe leading from the steam-pipe F into the steam-space E in the generator. Letter *g* represents an escape-pipe from the generator to carry off the condensed steam. Letters H H represent a metallic tube leading from the oil-space in the generator, or from the pipe T, and affixed to the outside of the machine, with stop-cocks suitably arranged, by which to ascertain the amount of oil in the generator. Letter I represents a pipe, through which to fill the oil-space *b b*. Letters J J represent a quantity of elastic sponges inclosed in wire netting and placed in the dome of the machine, for the purpose of steadying the pressure and securing a uniform flow of the gases or vapors, and for taking up and holding any unvaporized portions of the oil, and exposing the same to the further action of superheated steam there to be introduced, and for the better uniting and combining the vaporized

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oil with the superheated steam at that point. Letter K represents a continuation of the steam-pipe F through the dome and the sponges, and is perforated with numerous small holes along the upper parts to allow the superheater steam to escape upward and mingle perfectly with the gas or vapor from the oil in the dome, and further to vaporize any liquids or fluids which may be held in the sponges. Letters L L represent the dome which caps the machine, and is secured firmly by rivets, screws, and nuts to the gas-holder. Letters F′ F′ represent the vapor or gas-pipe leading from the top of the dome into the fire-box. Letters *m m* show the tubes inserted inside of the gas-pipe F, through which the united gases or vapors from the machine are introduced for combustion. Letter N represents a superheater placed in the fire-box, composed of a cast-iron cylinder filled with scraps or pieces of iron, and secured with steam-tight heads, through one of which steam is introduced from the boiler, and through the other superheated steam is conveyed by the connecting-pipes to the machine. Letters Q Q represent the boiler, from whence steam is taken by the pipe *q q* to the superheater. Letters R R represent the fire-box filled with flame from the burning vapors or gases. Letter S represents a common steam-gage, by which to show the pressure of the gases or vapors upon the machine. Letter T exhibits the pipe used for drawing oil from the generator, and cleaning the same.

The mode of operating the machine is as follows, to wit: Steam is taken from the boiler Q through the pipe *q* into the superheater N, and there superheated by the combustion in the fire-box R, from whence it passes with great force of pressure through the pipe F into the steam-space E in the generator, instantly filling the steam-tubes A A and the other steam-space E with superheated steam, and thereby heating the oil in the space *b b* in the generator, so that it is immediately converted into gas or vapor, nd passes off through the tube-bolts *c c* into the gas-holder O. From thence it passes, by the force of its own pressure, into and through the sponge J J in the dome L, where additional quantities of superheated steam are introduced by means of the pipes F and K into the sponges, and there perfectly united with the gas or vapor from the oil by force of the combined pressure of the steam-boiler, the superheater, and the generator. This supply of superheated steam in the dome L, regulated by proper stop-cocks, enables the engineer to compound the same with the gas or vapor from the oil in the exact proportions necessary to produce the greatest amount of heat with the least possible combustion of oil. From the top of the dome the united and compounded gases and vapors are conducted, through the pipe F′ F′ and the gas-tubes *m m*, into the fire-box R R, where perfect combustion is produced.

Suitable stop-cocks, valves, and wire netting should be placed between all the connections, always under control of the engineer, by which the utmost safety may be secured.

The word "oil," whenever and wherever it occurs, and standing alone as descriptive of the material from which gas or vapor is produced in the generator, is intended to include and describe any and every oleaginous and carbonaceous substance which may or can be introduced into the generator in a liquid or fluid state.

The advantages gained by our invention are, that the apparatus is more compact and simple, making it especially adapted for use on locomotives and other portable engines.

The gas-holder, being placed as a jacket around the generator, serves to strengthen it, and also to prevent any loss of heat by radiation. The steam-pipe K in the dome discharges steam or superheated steam into the sponges, so as to assist in carrying off the gas as fast as formed, and before any condensation or deposit of carbon can take place. The vapor and gas are also more readily formed in the generator by being rapidly removed when formed, and a thorough mixture of gas and steam is effected.

We have described a suitable form of superheater; but any other known form of apparatus used for superheating steam may be employed.

We have described our invention with special reference to the burning of petroleum, coal-oil, shale-oil, and the like; but we do not limit ourselves to the use of those materials, since there is a large number of hydrocarbons which may be vaporized by superheated steam, and then mixed and combined with steam or superheated steam, so as to produce the combustible gas or vapor which constitutes one part of our invention.

Having described our invention, parts of which are already secured to us by letters-patent numbered 95665, and dated October 12, 1869 (reference thereunto being had), and without now claiming anything therein contained, what we now claim, and wish to secure by letters-patent, is—

1. The improved apparatus herein described, composed of a steam-boiler, superheater, gas-generator, and gas-holder, arranged and combined as described.

146 2. The combination of the generator and gas-holder, so as to form one compact vessel, as described.

3. The combination of the dome, generator, and gas-holder.

4. The combination of the pipe K with the dome L, for the purpose of supplying steam to aid in carrying off the gas or vapor, and for mixing with the same, as described.

5. The steam-pipe F, with its two branches D and E, or their equivalents, so as to supply steam to the different parts of the apparatus, for the purpose described.

6. The introduction of superheated steam into the dome or top of the machine, so as to mix and combine with the gases or vapors from the oil, in any desired proportions, and thereby produce a new compound or gas, as described.

7. The process herein described for burning petroleum and other vaporizable hydrocarbons, the same consisting in first vaporizing the gas-producing material by means of superheated steam, and then mixing with the gas or vapor superheated steam, substantially as described.

The above specification signed by us this 22d day of March, 1870.

RODNEY M. WHIPPLE.
THOMAS S. DICKERSON.

Witnesses:
JOHN H. RICE,
WM. P. COPELAND.

147 AMBLER'S EXHIBIT. No. 19.

Supreme court of the District of Columbia, sitting in equity.

A. I. AMBLER
vs.
RODNEY M. WHIPPLE AND THOMAS S. DICKERSON. } No. 1783, Eq. Doc. 10.

Original bill.

1. A. I. Ambler, a citizen of the city of Washington, in the District of Columbia, brings this his bill of complaint against Rodney M. Whipple and Thomas S. Dickerson, citizens of Chicago, in the county of Cook, and State of Illinois, and at present sojourning and doing business in the District of Columbia.

2. Your orator hereupon sets forth that on or about the 27th day of March, A. D. 1869, at the suggestion of defendant Whipple, your orator invented and reduced to form by drawing, the petroleum-gas-generating apparatus, as shown by a copy of the same filed herewith, marked Exhibit A. I. A. No. 1, and prayed to be taken as and made a part of this bill. This drawing represents and shows a gas-generator, with oil chamber, steam space around the same, perforated plates, sand, or other porous material, and a "gas" dome. The object and intention of this combination was to produce gas from petroleum, or other oleaginous substances, by means of steam heat, and straining the same.

3. Your orator avers that, after reflecting carefully upon the invention as drawn and completed as aforesaid, and the results to be accomplished therefrom, your orator decided that it was necessary to introduce a new element or principle into the combination to produce the practical results desired in the manufacture of gas from petroleum, and steam pressure was incorporated in and made a part of the invention, and the same was accordingly reduced to form by your orator on the 9th of May, 1869, as shown by a copy of the original drawing filed herewith as an exhibit in the case, and prayed to be made a part of this bill, marked A. I. A. No. 2, and that the same is the sole and exclusive invention of your orator.

4. Your orator avers that the invention, as represented by this drawing, shows steam space for heat to generate the gas around the oil, perforated plates and porous substances to strain the same, a piston-head with steam chamber at the bottom of and in the oil chamber, with small holes to let the steam into the oil to assist in generating and liberating the gas, a pipe to conduct the gas into the receiver K, with stop-cock, and the receiver K, with piston-head, to compress or pack the same, to be forced into a gasometer or auxiliary-receiver for use. This drawing was made during the absence of said Whipple from this city at 361 I street, Washington, and was first shown to said Whipple as thus completed and drawn on his return, and is the sole invention of your orator.

5. This drawing shows steam heat to generate the gas, steam force or steam pressure to liberate the same and give action thereto, the receiver K to receive and compress or pack the gas by means of the piston-head, and a suitable force to operate the same.

6. That these inventions and each of them were fully made, completed, and reduced to form as aforesaid, without the aid or assistance of said Whipple or Dickerson, and are the sole and exclusive invention of your orator. That on the return of said Whipple to Washington, to wit, on or about the 20th day of May, 1869, your orator exhibited the original drawing last referred to as having been made by your orator May 9th, 1869, in the complete and finished form, as shown by the Exhibit A. I. A. No. 2 aforesaid, and not a single substantial idea of said Whipple was or is connected therewith to entitle him to the right of joint invention therein.

148 7. Your orator avers that the only thing that could be strained into the joint suggestion of said Whipple and your orator is gravel, sponges, or sand for straining the gas and keeping back the oil; that different porous substances were suggested by both your orator and said Whipple, but nothing was positively settled, and the matter was, from necessity, left to experiment and trial, and experiment and trial conclusively show that such strainers were an injury instead of an advantage in the process. Your orator avers that all porous substances of the class or kind indicated are old, and are of no benefit or advantage; but, as stated, rather an injury in the process, and that the substantial elements of the invention are steam heat and steam pressure, or steam force, and the mechanical combination by which these elements of heat and force are made available, and these porous substances were entirely abandoned for the purposes aforesaid.

8. The force employed for the compression or packing of the gas in the receiver K is not shown in the drawing, but the piston-head is shown; and it was contemplated by your orator that any suitable force or pressure might be employed to suit the special application of the principle.

9. Your orator avers that said Whipple expressed himself so well pleased with the results accomplished by the inventive labor of your orator, as shown and exhibited in the drawings aforesaid, that he agreed with your orator to furnish all the means necessary to obtain letters-patent or patents thereon, both in this country and in the countries of Europe, and to furnish the money necessary to build machines to demonstrate the utility and value of the invention; and an arrangement was entered upon accordingly by and between your orator and said Whipple, and the same was reduced to writing according to the agreement aforesaid on the 24th day of May, 1869, as will more fully appear by a duly certified copy of the same from the records of the Patent Office of the United States, the same being articles of copartnership filed herewith, and prayed to be taken as and made a part of this bill, marked Exhibit R. M. W. & A. I. A. No. 1.

10. That in furtherance of this arrangement quite a number of tin machines were first constructed and experimented upon at 361 I street, in this city, to carry out, as far as possible and practicable, the principles involved in the invention. By these experiments it was at once found that steam heat and straining would not produce the result of making or generating gas from petroleum; but when steam was so applied as to be brought in contact with the oil, the gas was generated, liberated, and forced forward into the receivers and tubes for use, and not otherwise. As soon as these experiments had become sufficiently satisfactory to your orator and said Whipple, and having produced from the experimental machines afore-

said a fine gas and flame, it was decided to apply for letters-patent of the United States; and on the 24th day of May, 1869, and in the name of Rodney M. Whipple and Augustin I. Ambler, as joint inventors, application was made for letters patent; and on the 13th day of July, 1869, letters-patent were granted (No. 92687) to said Whipple and your orator, a duly certified copy of which is filed herewith and prayed to be made a part hereof, marked Exhibit R, M. W. and A. I. A. No. 2.

11. That in furtherance of the general plan and the arrangement made with said Whipple, and for the purpose of enabling him to act for the interest of your orator, and for the best interest of the business intrusted to his management under the letters of copartnership aforesaid, your orator made and executed, May 25th, 1869, to said Whipple an assignment of the entire of your orator's interest in the letters-patent aforesaid, and in the subject-matter thereof, as will more fully appear by a duly certified copy from the records of the Patent Office, filed herewith and prayed to be made a part of this bill, marked Exhibit A. I. A. No. 3.

12. That on the execution of the several papers and documents aforesaid, to wit, application for letters-patent of May 24th, 1869, the letters of copartnership of the same date, and the assignment of May 25th, 1869, referred to, the said Whipple left the city of Washington for Chicago.

149 13. Your orator further avers that said defendant Whipple, previously to his starting for Chicago as aforesaid, made arrangements with one Wm. T. Duval, of Georgetown, D. C., to build, under the name and firm style of Whipple and Ambler, a full-size gas-generating apparatus, in accordance with the specifications and working drawings furnished by your orator, and that said Duval did, at his shops at Georgetown, from said drawings and specifications furnished by your orator, in behalf of said firm of Whipple and Ambler, make the patterns in wood, and subsequently cast the same in iron, as a part of said improved gas-generating apparatus, under the application for letters-patent aforesaid and under said letters of copartnership.

14. That during said Whipple's absence to Chicago, as aforesaid, your orator and his son, William R. Ambler, continued to experiment with tin machines, and so clearly did it become known to your orator, and prove necessary that additional heating surface must be added to the machine or apparatus, that your orator decided to incorporate in his plans the tubes and chamber, as shown in Exhibit A. I. A. No. 4, thus changing the air-chamber, as shown in the letters-patent, without tubes, to a steam-chamber, with tubes, for the passage of the steam and gas, and the full-size machine was constructed accordingly. This was done to admit of more steam heat being brought in contact with the oil, and the steam-chamber and tubes were made a part of the combination as aforesaid. The experiments upon this machine were continued at the shops known as the Ellis shops, at the foot of Thirteenth street, in this city; that these tubes and this steam-chamber were incorporated at the instance of your orator, and against the strong opposition and earnest objection of said Whipple; that this idea of additional heating surface was the exclusive and sole invention of your orator, and not of said Whipple. This invention is thus fairly illustrated in the Exhibit A. I. A. No. 4, made and executed solely by your orator, and without the aid, help, or co-operation of said Whipple.

15. Your orator further avers that when the machine at the Ellis shops aforesaid was so far completed as to be ready to put together as aforesaid,

and in the absence of said Whipple, the same was done at the instance of your orator, and under his direction, when steam was let on with heat and force, and the result produced was, upon the first trial, remarkably satisfactory, and gas and flame were produced from ten or twelve burners, attaining an altitude in the open air of from six to ten feet, and so continued until the oil became exhausted from the oil-chamber in the generator; thus showing a disadvantage in the movement of the piston-head in the oil-chamber by forcing the oil out and through the strainers referred to. The correction of this difficulty was attained by fastening down the piston so as to prevent it from rising. Packed strainers and English dripping-stone were then applied by said Whipple, and in opposition to the judgment of your orator; and also, at the instance of said Whipple, the piston-head was packed steam-tight, so that no steam could pass through into the oil, the holes not having been made through the piston-head at this time; and the experiment proved a failure, as no gas was generated and no flame produced. This was called the "Whipple Experiment," Mrs. F. A. Hoden and Mrs. A. I. Ambler, residents at 361 I street, having been invited to witness the same. This settled in the mind of your orator two facts: First, that compact straining would not do; and second, that steam pressure or force could only be made available by being brought in direct contact with the oil-chamber of the generator; and to carry out this solution of the problem, the strainers were changed to the most porous character, such as gravel and charcoal, and, at the instance and under the direction of your orator, a small hole was drilled through the piston-head, so that the steam from the steam-chamber below the piston-head could pass through into the oil and assist in generating and liberating the gas. Upon
150 the top of this hole a spring valve was fastened down, so as to prevent the oil from leaking through into the steam-chamber beneath. And the result following this experiment was similar to the first, making gas and flame in abundance, but attended with too much condensation for the purposes of light. And it was decided by said Whipple to try superheated steam, which had been frequently talked of between your orator and said Whipple. Your orator opposed this plan, as being dangerous to life and property; but said Whipple decided to try the same, and a coil-pipe found about the shops was used accordingly for superheating the steam, of the result of which your orator is not fully advised, as about this time differences between your orator and said Whipple had assumed that state of embarrassment as to preclude the idea of further personal co-operation; and said Whipple having refused to furnish your orator with the necessary means to go on jointly with the experiments incidental to the demonstration of the invention, and finally your orator being notified not to come about the shops where the experiments were being tried, and from the further fact that the said Whipple entirely ignored the rights and character of your orator as joint owner and patentee in and of the said invention and a copartner as aforesaid, and manifested a determination to seize upon and appropriate the same to his own exclusive use and advantage, your orator was compelled to withdraw from further co-operation personally with said Whipple in and about the same; said Whipple having absolutely refused the just demands of your orator for money to proceed, and from on or about the first day of September, 1869, all intercou'se and personal co-operation ceased between your orator and said Whipple in and about the same.

16. Your orator further avers, that he has acted from the beginning of the transaction and the copartnership aforesaid towards said Whipple with the most perfect good faith; and your orator has trusted to said Whipple's sense of justice and right in this behalf. Your orator further avers, that he has used his utmost ingenuity, inventive skill, and ability to perfect and render complete the said invention for the interest of both of the parties to the copartnership, as your orator obligated himself therein to do.

17. Your orator further avers, that since the enforced withdrawal of your orator, as aforesaid, from active personal co-operation as aforesaid, said Whipple has been planning, conspiring, and fraudulently co-operating with said defendant Dickerson, who is, as your orator has been informed and believes, an old and familiar acquaintance of said Whipple in Chicago, of many years' standing, for the purpose of alienating, wasting, and destroying your orator's rights in said letters-patent No. 92687, and in the subject-matter thereof. And that said Whipple and Dickerson, as your orator fully believes from information received and record facts exhibited, have been and are conspiring to defraud your orator of his just rights in the subject-matter thereof, and in the letters of copartnership aforesaid.

18. That, in pursuance of the fraudulent intention and design aforesaid, the said Whipple has taken the said Dickerson into his confidence, and surreptitiously shown and suggested the details aforesaid, and the form, combination, and character of the said invention, and of the improvements
1 made thereon by your orator, and of the ideas suggested by your orator in the process of the construction of the said machine, and that the same was exhibited by said Whipple to said Dickerson for the fraudulent design and purpose aforesaid; and that a part of the machine, as constructed by said Whipple and Ambler at the shops of Ellis and Co., has been removed to the shops of said Duval, and the ownership changed from Whipple and Ambler to Whipple and Dickerson, without the knowledge or consent of your orator, and adverse to his interest; and at the suggestion of said Whipple, as your orator has been informed and believes, and from the information derived from the record of facts in the case, the said
151 Thomas S. Dickerson has heretofore, to wit, on the 16th day of September, A. D. 1869, made oath and filed in the Patent Office of the United States, an application for letters-patent upon the subject-matter of said invention, as the first, original, and sole inventor of the improvements aforesaid in generating gas from petroleum, substantially as shown in the drawings and experiments aforesaid, and claims the same as his invention; and letters-patent of the United States, No. 95665, bearing date October 12th, 1869, were duly issued from the Patent Office of the United States to Thomas S. Dickerson and Rodney M. Whipple, as the sole assignees of Thomas S. Dickerson, the assumed inventor thereof, a duly certified copy of which is filed herewith and prayed to be made a part of this this bill, marked T. S. D. & R. M. W. No. 1.

19. Your orator avers that said Whipple bore towards your orator a high fiduciary relation, as shown in the letters of copartnership and in the assignment of your orator's entire interest in trust in said invention, as hereinbefore set forth, and exhibited at the time said application of said Dickerson for the letters-patent, No. 95665, was filed in the Patent Office as aforesaid; and yet the specification in said application of said Dickerson is in the handwriting of said Rodney M. Whipple; and your orator avers

that the second claim, in the handwriting of defendant Whipple, and in the letters-patent issued to Dickerson and Whipple, is substantially the same as the fourth claim in the letters-patent issued to Whipple and Ambler of prior date; these claims are almost ipsissimis verbis; and your orator avers, from information and belief, that said Thomas S. Dickerson is not the original and first discoverer or inventor of the thing patented to him or any substantial part thereof claimed as new; and that he has illegally and unjustly, fraudulently and surrepti'ously, applied for and obtained the patent for that which he has not discovered or invented, but which was and is the discovery and invention of your orator; and that said Whipple falsely, fraudulently, and surreptiti'ously aided him therein, and in open violation of your orator's rights, and to his damage and injury.

20. Your orator avers that the only difference in the machine represented by letters-patent No. 95665, granted to Dickerson and Whipple, and the drawings and experimental machine, as constructed under the direction of your orator as aforesaid, at the shops of Duval and Ellis and Co., is in the introduction of the tubes A A, as shown in the drawings of the patent No. 95665, and these are the common tubes of a tubular boiler; and these tubes were frequently suggested by your orator as necessary additional heating surface. The experimental machine, as shown substantially in Exhibit A. I. A, No. 4, and in the generator thereof, shows the steam space at the bottom, beneath the piston-head, and the steam space at the top, communicating with the steam space around the oil-chamber with the tubes *c c* through the upper steam space—the pipe D, in the patent No. 95665, being only a mechanical equivalent for the hole to let the steam through the piston-head, as aforesaid, for the purpose of its introduction to the oil direct. That the machine constructed by Whipple and Ambler, as aforesaid, has become a part of the combination upon which the application of said Dickerson for letters-patent No. 95665 is predicated, and the same, with the sole addition of the common boiler-tubes, as aforesaid, is now located at the shops of Duval, and treated and known as the joint property of Whipple and Dickerson, your orator being ignored therein and denied admittance thereto.

21. That the said letters of copartnership between your orator and said Whipple remain intact in every particular so far as any act of your orator is concerned, and yet the said Whipple has assumed, and is assuming, has maintained, and is maintaining, an adverse interest to your orator in and about the subject-matter thereof, and greatly to your orator's damage and injury.

152 22. That said defendant Dickerson has made and executed to defendant Whipple an assignment to one undivided one-half of the said letters-patent No. 95665, and the subject-matter thereof, a duly certified copy of which from the Patent Office is filed herewith, and prayed to be made a part hereof, marked Exhibit T. S. D., No. 1.

23. Your orator avers further that said defendants have united together in violation of your orator's just rights in this behalf, and for the purpose of defrauding and swindling your orator out of his property and interest in said invention and the letters-patent aforesaid; and further, that they have, as hereinafter set forth, sold, assigned, conveyed, and alienated certain States, steamboats, etc., and railroads, and for which they have received, as shown by the records, the full sum of $85,000, and further alienated by

an assignment in trust, covering $18,000, and, in full, the sum of $103,000, as shown by the exhibits of trust and sale filed herewith and prayed to be made part of this bill, marked Exhibits R. M. W., No. 1, and T. S. D. and R. M. W., No. 2, and by the records of the Patent Office, in liber J 12, page 128, and again in liber J 12, page 163, in dates and sums as follows, to wit: November 11th, 1869, in trust for the aggregate sum of $18,000; November 11th, 1869, the sum of $10,000; December 21st, 1869, the sum of $50,000; and December 18th, 1869, the sum of $25,000 —this last being recorded December 28th, 1869.

24. Your orator avers that he has received no part of any or either of said sales as his share of the proceeds thereof, and that the same is presumed to be in the hands of said Whipple and Dickerson, and that the same are held and enjoyed adversely to your orator, and in bold and open violation of your orator's rights therein. That, by the terms and conditions of said letters of copartnership, it is the duty of said defendant Whipple to make due reports and furnish accounts of all and singular the matters and things done in this behalf, and share and share alike in the proceeds and profits derived therefrom, which said Whipple has utterly refused, failed, and neglected to do. That the records of the Patent Office show actual receipts as aforesaid to the full sum of $85,000, and in trust an interest held to secure the sum of $18,000, making the aggregate of the sum of $103,000, as aforesaid, since the 11th of November, 1869, being less than two months, in and about the subject-matter of said letters of copartnership and the letters-patent of the United States, issued to Whipple and Ambler; and there are reasonable grounds of belief and just cause to apprehend an entire alienation and absorption of the rights of your orator and of your orator's property in said letters-patent, and the letters of copartnership aforesaid, and the subject-matter thereof, if the prayer of your orator for a preliminary injunction is not granted by this honorable court to stay the fraudulent acts and illegal proceedings and fraudulent transactions of these defendants.

25. Your orator avers that by reason of the premises aforesaid, and by the fraudulent and illegal acts of the defendants, your orator has sustained damages to the amount of fifty thousand dollars.

26. Your orator therefore prays that upon the final hearing the letters-patent, No. 92687, bearing date July 13th, 1869, issued to Rodney M. Whipple and Augustin I. Ambler, be vacated, set aside, and annulled, the subject-matter of said letters-patent being the sole and exclusive invention of your orator.

27. That letters-patent No. 95665, bearing date October 12th, 1869, issued to Thomas S. Dickerson and Rodney M. Whipple, as the assignees of defendant Dickerson, be vacated, set aside, and annulled, as having been obtained by collusion, false suggestion, conspiracy, and fraud, and in violation of the rights of your orator.

153 28. That said letters of copartnership of May 24th, 1869, made and executed by and between Rodney M. Whipple and Augustin I. Ambler, aforesaid, be closed, determined, annulled, set aside, vacated, and made of nought, for and on account of the breaches and violations on the part of said Whipple of the covenants therein set forth, and for and on account of the collusion, conspiracy, fraud, and injury done as aforesaid; and that in the discretion of this honorable court a receiver be appointed

to take charge of and hold the property and assets of the copartnership, subject to the decision of this court, and upon a final hearing to grant to your orator such just and fair proportion of any and all sums, proceeds, and assets derived from and growing out of the sales aforesaid, or either of them, as may be found just and right.

29. That said assignment made and executed by your orator to said defendant Whipple on the 25th day of May, 1869, as aforesaid, appears by exhibit marked A. I. A., No. 3, be set aside, vacated, annulled, and made of nought, by reason of the premises aforesaid.

30. That the said defendants be commanded and required to make a full, fair, and complete report, and render an account of all and singular the details and items of the business transacted by them, or either of them, in and about the premises, including any and all negotiations and sales made or pending, of every kind and character, by which assets or proceeds have been obtained and received, or due and unpaid, since the 24th day of May, 1869, by said defendants, or either of them, and file the same as exhibits with the clerk of this honorable court for the use and benefit of the parties and counsel to and in this suit.

31. Your orator further prays that said defendants, their agents and attorneys, and each of them, be estopped, prohibited, and enjoined from any further sale or sales of said invention, or of the letters-patent aforesaid, or either of them, or of the subject-matter thereof, or of making any assignment or assignments, of granting any license or licenses, rights, or privileges whatever during the pendency of this suit, or until the further order of this court. That said defendants, their agents and attorneys, and each and every one of them, be enjoined, required, and commanded to abstain from any and all manufacture and use of said invention as set forth and described in said letters-patent, or either of them, and the subject-matter thereof, until the further order of this honorable court.

32. To the end, therefore, that the said defendants, Rodney M. Whipple and Thomas S. Dickerson, may answer the several matters and things hereinbefore set forth as fully and particularly as if the same were herein again repeated, and they were and each of them was hereunto specially and distinctly interrogated, and that they and each of them be compelled to te answer accordingly, and that damages may be awarded against said defendants and each of them according to equity and justice in this behalf, and that an issue quantam damnificatus be directed to issue from and out of this honorable court, to determine by a jury the damages sustained by your orator by reason of the fraudulent and illegal acts complained of and set forth in this bill.

And may it please this honorable court to grant unto your orator the writ of subpœna against the said defendants, Rodney M. Whipple and Thomas S. Dickerson, commanding them, and each of them, to appear in this court at some certain day named therein, to answer the premises and abide by and perform such order and decree as may be passed herein; and your orator prays for such other and further relief, etc., and as in duty, etc.

A. I. AMBLER.

(Indorsed:) 1054. Original bill in case of Ambler vs. Whipple & Dickerson. Sup. ct. D. of C.

154 *Supplement bill of complaint of Augustin I. Ambler, the above-named complainant, against Rodney M. Whipple and Thomas S. Dickerson, the above-named defendants, in this case exhibited.*

1. Your orator avers, that on or about the 30th day of May, 1870, pendente lite, your orator sold, assigned, and conveyed to one Henry F. Gardner, of Boston, Massachusetts, all and singular his right, title, interest, and equity in and to certain letters-patent No. 92687, issued to Rodney M. Whipple and Augustin I. Ambler, July 13, 1869, and the subject-matter thereof; and in and to the right, title, interest of your orator in letters of copartnership of May 24, 1869, and the subject-matter thereof; and of this suit and the subject-matter thereof; but which title or conveyance was not absolute, as it appeared upon its face and in its contents, but was conveyed and held by said Gardner in trust, including a trust for and on behalf of Rosaline N. Ambler, the wife of your orator, under a memorandum of agreement bearing date May 30, 1870, made and executed by and between Henry F. Gardner, Augustin I. Ambler, and Rosaline N. Ambler, and which agreement, with the latter and transfer growing out of the same, is on record in the Patent Office of the United States.

2. Your orator further avers, that on the 15th day of October, 1870, pendente lite, another memorandum of agreement was made and executed by and between the same parties, to wit, Henry F. Gardner, Augustin I. Ambler, and Rosaline N. Ambler, by and in which it was agreed and stipulated that said Gardner should reassign and fully reconvey to your orator all and singular the interests aforesaid in said letters-patent, No. 92687, the letters of copartnership, and of this suit, so as to fully and completely restore to your orator all his original rights in the same, pendente lite. On the 20th day of October, A. D. 1870, by an absolute assignment, in due form of law, all and singular his right, title, and interest in and to the said letters-patent No 92687 and the subject-matter thereof; the letters of copartnership and the subject-matter thereof; and the rights, interests, and equities of this suit, as fully as conveyed to him, and by said assignment reinstating the title of your orator in the subject-matter of this suit, as fully and completely as the same was held and enjoyed by your orator when this suit was brought, January 4, 1870.

Your orator further avers that said memorandum of agreement of October 15, 1870, and the assignments and transfers growing out of the same and conditioned therein to be made, are all recorded or filed for record in the Patent Office of the United States.

3. Your orator further avers that said defendants did, in or about the month of April, 1870, pendente lite, falsely, as joint inventors, make application, fraudulently and surreptitiously, for letters-patent of the United States for an improvement in machines or apparatus for burning liquid fuel; and that letters-patent were issued hereon, pendente lite, No. 102662, May 3, 1870, a copy of which is herewith filed, and prayed to be made a part of this bill.

4. Your orator further avers that said improvement upon which said letters-patent were issued, and the apparatus set forth and described therein and claimed as the joint invention of the said defendants, is the sole invention of your orator, and is not the invention of the defendants, or of either of them.

5. That said invention, as described in said letters-patent, combines and

embraces all the essential functions of use of the old machine of Whipple and Ambler, as set forth in the original bill, and as showing the state of the art in said machine long previously to the said application of the defendants for said letters-patent No. 102662.

155 PRAYER.—The premises considered, your orator prays that upon his original and supplemental bills, he have a decree fully establishing his rights as said inventor of the several improvements in the manufacture of gas from petroleum; that the full effect of said articles of copartnership between Whipple and Ambler be established; that the said Dickerson and Whipple be decreed to convey to said partnership firm of Whipple and Ambler any and all rights which they claim or assert under the said inventions, patented to Whipple and Ambler, to Whipple and Dickerson, as assignees of Thomas Dickerson, and to Dickerson and Whipple; that said defendants be decreed to account for all sales made by them, and to pay into court all moneys received by them for all sales under the one patent or the other; that they return and file in court every security of whatever form or character which they or either of them have received for sales or use, grant, license, assignment, or transfer of any patent rights under either of said patents.

(3d.) Your orator further prays that a receiver may be appointed to take charge of all these patent-right sales, assets, securities, properties, and rights of every description, with power to dispose of and use the same for the benefit of your orator and said Whipple, in such manner as this honorable court shall order and decree.

(4th.) Your orator further prays that upon the final hearing he may have a perpetual injunction, and an order from this honorable court restraining said defendants from manufacturing, vending, or using in any way said invention, said letters-patent aforesaid, or either of them, or the subject-matter thereof, and from making any assignment or assignments, and from granting any license or licenses rights, or privileges whatever under or growing out of said inventions or said letters-patent, or either of them, or the subject-matter thereof; and that in the mean time a receiver ad interim be appointed by this honorable court to take charge of the several letters-patent in the several bills and answers described, with full power to demand and receive the same from the parties, their attorneys, agents, or servants; and with power to take charge of the moneys, securities, assets, and effects which the said defendants, or either of them, may have received for sales of patent rights under the several or either of said patents, to collect any securities as they may fall due, and to hold and preserve such moneys and properties, putting the same out at interest, as this court shall order, and making such sales as this court shall direct, until the final hearing.

(5th.) Your orator further prays for an account in this behalf, and for a just and equitable division of the profits therefrom; and that a dissolution of the partnership between Whipple and your orator may be decreed upon such terms as to this honorable court shall appear proper.

(6th.) And your orator further prays for such other general, particular, and special relief as to this honorable court shall seem meet, and agreeable to equity and good conscience.

AUGUSTIN I. AMBLER.

GEO. P. FISHER,
Solicitor for Plaintiff.

I do solemnly swear that I have read the supplemental bill of complaint by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

AUGUSTIN I. AMBLER.

Sworn and subscribed before me this 27th day of February, 1871.

DAVID R. SMITH, *J. P.* [L. S.]

A. I. AMBLER, *In person.*

(Indorsed:) 1054. Ambler's Exhibit No. . Sup. bill in Ambler vs. Whipple and Dickerson. Sup. ct. D. of C.

156 AMBLER'S EXHIBIT No. .

Supreme Court of the United States. No. 24, October term, 1874.

AUGUSTIN I. AMBLER
vs.
RODNEY M. WHIPPLE AND THOMAS S. DICKERSON.
} Appeal from the supreme court of the District of Columbia.

Mr. Justice MILLER delivered the opinion of the court.

This was a suit in chancery in the supreme court for the District of Columbia, the plaintiff then being appellant here.

It grows out of a copartnership between Ambler and Whipple, formed for the purpose of experimenting with and bringing to perfection an invention by which gas, for lighting and heating and other useful purposes, was to be generated from petroleum; for obtaining a patent or patents for the result of their labor, and for the management of the business after such patent had been obtained.

The terms of the partnership are clearly stated in a memorandum
157 of agreement signed by the parties, consisting of nine articles.

It sufficiently appears from these articles that Ambler was looked upon as the man of inventive genius, and Whipple the man of business and the source of the funds necessary to conduct the experiments and place the affair on a successful footing.

By these articles it was agreed that if success attended their efforts the profits were to be equally divided, after deducting the expenditures which Whipple might find necessary to be advanced. That Whipple might have full control of his branch of the joint venture, it was stipulated that Ambler should assign to him his interest in the patents which might issue, and in pursuance of this stipulation Ambler did execute an assignment of all his interest in the invention and in the patents which might be granted thereon. The articles of partnership are dated May 24, 1869, and the assignment the day after.

In view of the present controversy the most important of these articles of agreement is the sixth, which is in the words following: "ARTICLE SIXTH. That any and all letters-patent that may be obtained in this country and all other countries by virtue of said invention, or by reason of any improvement, or of any modification of the same by either party, shall be owned by and between the parties to this agreement in equal

shares, to wit, one undivided half to each, and all proceeds of sale or sales of any and every kind and character shall be shared by and between the parties share and share alike."

The bill alleges that after experimenting three or four months a result was obtained and a patent issued in the name of Whipple and Ambler, No. 92687, dated July 18, 1869, and that while the patentees were experimenting under this patent and seeking remedies for apparent defects and for improvements in their invention, the true principle of success was developed about the 20th or 21st day of August. That immediately thereafter the defendant, Whipple conceived the design of excluding the plaintiff from any benefit of the invention, and commenced a course of proceedings for the purpose of defrauding him of his rights. That in pursuit of this scheme he introduced the other defendant, Thomas S. Dickerson, in the absence of the plaintiff, to the place where the experiments had been made and to the machinery which had been used, and that in a few days Dickerson applied for a patent, afterwards issued, which embodied the invention of Ambler, with only a colorable variation. That thereafter Whipple and Dickerson entered into a copartnership and successfully introduced the invention of plaintiff into use, and by sales of particu-
158 lar States and districts had received in a short time over $100,000. That plaintiff had been forcibly debarred from the workshops where his invention was used, and denied all interest in the result of his labors.

This is the substance of the bill of complaint, and the relief prayed is that Whipple and Dickerson make discovery of the sales and profits; that they be enjoined from the use of plaintiff's invention, and for a decree for compensation and damages.

The answer of Whipple admits the original agreement, assignment, and the issue of the patent to Whipple and Ambler. It admits also the partnership with Dickerson. It denies all intent to defraud complainant, but admits the sales or contracts for sale of the Dickerson patent. It denies the identity of the two patents, with inventions set forth in them. It charges that after a full experiment with the first patent, it proved a total failure, and that complainant abandoned all further effort with it, and left the city of Washington, where the experiments had been conducted.
159 That Dickerson having been previously engaged in inquiries in the same direction perfected an invention of great value which effected what he and Ambler had failed to do, and that he thereupon entered into a partnership with Dickerson, in regard to that invention, as he had a right to do, and that in the sales, contracts, or profits growing out of this patent, plaintiff had no interest whatever.

He sets up as a further defense, that defendant by his drunkenness, dishonesty, and general bad repute, had rendered a continuance of the partnership impossible; and that through one Warrick Martin he had purchased of Ambler all his interest in the patent of Whipple and Ambler, and in the partnership business in which they were engaged.

The answer contains allegations of the fact, that before the partnership commenced plaintiff had been convicted of a felony, and was otherwise infamous, but neither in the answer nor in the cross-bill, where this matter is repeated, is it stated that this fact came to his knowledge after he had entered into the partnership.

160 As we have already said, a cross-bill was filed by the defendant Whipple, setting up the release of Ambler, his improper conduct, the failure of the experiments with the original invention, and praying that Ambler be enjoined from setting up any right or claim against him on account of said invention, or on account of the articles of agreement between them. To this Ambler answered, very fully denying the release and denying the failure of the invention and his abandonment of it. Dickerson's separate answer contains nothing of moment not included in Whipple's.

It is to be observed that neither party prays for a dissolution of the partnership. Indeed, the bill and cross-bill, and the answers to both, proceed upon principles which do not recognize the partnership as existing. Complainant seems to imply that by reason of Whipple's course of conduct he is remitted to all his rights as the inventor, and claims that being the sole inventor of the successful machine he is entitled to all the benefit of it. Whipple assumes that by his purchase from Ambler, and Ambler's misconduct, that the partnership has been dissolved, and he has succeeded to all its rights, if they are of any value.

The testimony is voluminous and contradictory. In the view we shall take of the case, while the decision will mainly turn on these questions of fact, we shall only state the effect which the testimony has had upon our minds without referring to it in detail.

1. If the complainant really released or sold his interest in the partnership business, or in the patent of Whipple and Ambler, his case is at an end, and we will, therefore, consider that question first.

An instrument of writing is produced which is supposed to have that effect. It recites the issuing of the patent No. 92687, the assignment of it to Whipple, the articles of partnership, and that a disagreement existed between Ambler and Whipple in regard to the construction of the invention; that Ambler is anxious to be released from his obligations to Whipple, and is willing to convey all his interest in the invention to Whipple, and then declares that in consideration of the full discharge of $1,000 due by Ambler to Whipple, Ambler sells and conveys all his interest in the invention and in all improvements made, or which may be made, by Whipple; and that Whipple releases Ambler from all obligations on account of the contract, and from the payment of the one thousand dollars. There is no doubt that the language of the instrument is sufficient for the purpose for which it was intended, but it wants the signature of Ambler; nor is pretended that he ever signed it, or any
161 copy of it. It is clearly on its face a paper which requires the signature of both parties to make it binding on either. The releases and assignments are mutual, and each is the consideration of the other, and it requires no great penetration to see that it was drawn in the interest of Whipple, who signed it, and not in the interest of Ambler, who did not sign it.

But it is argued that the paper was procured from Whipple by Warrick Martin, the agent of Ambler, at Ambler's request, and was signed by Whipple and delivered to Martin; that Martin delivered it to Ambler, who received a copy of it without objection, and promised to sign it. Admitting all this to be true, it is very clear that both parties intended to have a written instrument signed by each, as the evidence of any contract

they might make on that subject, and neither considered the contract concluded until it was fully executed. Under these circumstances, Ambler had a right to decline to sign the papers, and, until he signed, he
162 was not bound by it. It was not drawn by him nor at his dictation. It was first signed by Whipple, and drawn up by him or in his presence, and made to suit his purposes. It is idle to say that because Ambler took a copy of it from Martin to examine he became a party to it, though he never signed it.

Further, we are of opinion, notwithstanding Martin's declaration that he acted on Ambler's suggestion that he was throughout the whole affair acting for Whipple, and governed solely by his interest. This transaction does not, in our opinion, establish any release or transfer of Ambler's interest in the partnership concern. Nor is there any such evidence of abandonment of the enterprise on the part of Ambler as to justify the court in holding that he had lost or forfeited his rights in the venture. It is true that about the middle of August he left Washington City for a week or two, but when he returned he found himself excluded from the workshops, and from all paticipation in Whipple's plans, and it seems probable he was by Whipple's authority forbidden to go there before he
163 left the city. It is unreasonable to call this a voluntary abandonment of the enterprise.

3. What weight would be given to the charges of bad character, drunkenness, and dishonesty in a suit by Whipple to dissolve the partnership we need not here state. If all that is charged were proved in such a suit it would make a strong case for relief, on such terms as equity might impose for the protection of both parties. But they did not authorize Whipple, of his own motion, to treat the partnership as ended and take to himself all the benefits of their joint labors and joint property. It seems also to be a fair inference from the pleadings and other circumstances that Whipple must have known of Ambler's conviction for felony before he entered into the agreement with him.

We are, therefore, of opinion that the case shows nothing which deprives Ambler of his rights under the original contract with Whipple.

4. We are also of opinion that Whipple is chargeable as trustee for Ambler with one-half of all that has been realized or may be realized from the use of the patent to Whipple and Ambler and the patent to Whipple and Dickerson.

This conclusion we rest upon the sixth article of the agreement between Whipple and Ambler. This article, which we have already copied verbatim, provides that any improvement or modification of the invention which may be made by either party, in this country or any other, for which a patent may be obtained, shall enure to the joint benefit of both. In the peculiarly close and confidential relation which the parties assumed toward each other in regard to an invention which both understood to be imperfect, undeveloped, and the subject of future trial and experiment, this provision was eminently wise and necessary. And since Whipple was, by the assignment of Ambler, invested with the legal title of the patent and chief conduct of the affairs of the partnership, he was under a peculiar obligation of good faith as both partner and trustee of Ambler.

Notwithstanding the bills, cross-bills, and supplemental bills set up, both the patent to Whipple and Ambler, and the patent to Whipple and Dick-

erson, No. 95665, and another issued to them pending the suit No. 102662, which are charged by Ambler to be all covered by his invention, and by the others to be totally distinct, none of these patents are found in the record. It is impossible, therefore, for this court to give any conclusive opinion or judgment as to how far they are identical, or how far there may be distinctive features, under which the whole or some part of the two latter patents might be sustained. We base our decree on other principles.

We are satisfied from the testimony in the case that the results of the experiments conducted by Ambler and Whipple in their joint enterprise developed the practicability of success in obtaining the object of their pursuit. That these experiments disclosed the fact that while they had mainly relied on the effect of heat by steam, applied to petroleum indirectly by encompassing the vessel in which the petroleum was, by the steam let into an outer chamber, it was found that it was necessary to introduce the steam into the vessel, thus bringing it into direct contact with the petroleum.

164 Whether Ambler had seen this as clearly as Whipple is not very well or satisfactorily shown. But it is proved to our entire satisfaction that when Whipple saw this point, and that through it success was within his reach, he immediately recognized its great value. This experiment was made at the same shops, with the same machines, and in the same pursuit which for three months had engaged the active energies of both Ambler and Whipple. The weight of evidence is that Ambler was present and assisting, but this is denied by other witnesses.

What is clear to us is that as soon as Whipple recognized the value of this discovery he made up his mind to be rid of Ambler.

This decisive experiment is said to have been made on the 21st of August. The book of accounts of expenditures made by Whipple and kept under his direction shows that up to that date Whipple and Ambler's names had been used in charging up the items. On the 23d Ambler's name was dropped, and it was all charged to Whipple. Many declarations of his are proved about this time of the fortune he would make, and it is proved by F. A. Holden, with whom Ambler had been boarding, that up to this time Whipple had paid for his board without objection, but shortly after notified him he would do so no longer. It appears from Dickerson's supplemental and amended answer, that in the months of June and July Whipple was in Chicago and tried to instruct him in the matter in which he and Ambler was engaged.

It is also shown that on the 3d of September, within less than two weeks after the purpose of Whipple to get rid of Ambler was fully conceived, Dickerson made his appearance in Washington, coming from Chicago, and was taken by Whipple to the shop where the recent experiment had been made. This was in the absence of Ambler from the city. Precisely what took place between Whipple and Dickerson will probably never be accurately known. We must judge of that by the results which followed.

The first of these was that on the 16th day of September, only thirteen days after his first sight of the machinery in the workshops, and his first interview in Washington with Whipple, Mr. Dickerson filed in the Patent Office an application for a patent, the specification and claims of which were so nearly like those of Ambler and Whipple, and so nearly

embody the results of their experiments, as to leave little doubt that it originated in the Whipple and Ambler experiments, however much it might differ in some particulars from their patent.

This application was pressed so successfully that a patent was issued on it to Dickerson and Whipple on the 12th of October. In the meantime Dickerson and Whipple had entered into a partnership in the matter, and Ambler was excluded from all control.

165 These facts are undisputed, and taken in connection with much other testimony of a direct character, convince us that Whipple, in violation of his trust to Ambler, and in fraud of his rights, deliberately entered upon a scheme by which Ambler was to be deprived of the benefits resulting from success in their joint experiments. That in pursuit of this scheme he called in Dickerson, who, without having invented anything, and in a remarkably short space of time, procured letters-patent to issue to himself and Whipple, which embraced the results of Ambler's discoveries and experiments, whether they embraced anything else or not.

For all that has come to Whipple's hands, for all that is included in the patent, to him and Dickerson, he is, under the terms of the sixth article of the agreement, a trustee for Ambler to the extent of one-half, and must be so charged and held to account in this proceeding.

As to Dickerson, while he is not a trustee under that article, we are of opinion that he has so far knowingly connected himself with and aided in the fraud on Ambler that he cannot resist Ambler's right to an undivided half of both the patents to Dickerson and Whipple, and of the profits made or to be made out of them. What rights or remedies he may have against Whipple we do not decide.

The result of these views is that the decree of the supreme court of the District must be reversed, that a decree must be entered in that court declaring Whipple and Dickerson to hold in trust for the benefit of Ambler to the extent of one-half the two patents issued to them, mentioned in the pleadings as 95665 and 102662; that an accounting be had as to the profits realized by them, or either of them, from the use or sale, or otherwise arising from said patents, and for such other and further proceedings as may be in conformity to this opinion.

True copy. Test:

[SEAL.]

D. W. MIDDLETON,
Clerk Supreme Court U. S.

(Indorsed:) 1054. First opinion of Sup. Ct. U. S.

166 EXHIBIT No. .

In the Patent Office of the United States.

In the matter of interference between the application of A. I. Ambler and the patents of Thos. S. Dickerson, and Dickerson & Whipple, generating gas from petroleum, before the examiner of interferences, February 3d, 1872.

The dates of the filing of the several applications are as follows:

Thos. S. Dickerson, Sept. 16th, 1869. Patent granted Oct. 12th, 1869. Dickerson & Whipple, April 15th, 1870. Patent granted May 3d, 1870. A. I. Ambler, May 9th, 1870. After various amendments involving

modifications of the invention, and the introduction of disclaimers, the primary examiner, in calling for Ambler's preliminary statement under rule 53, decided that the subject-matter involved was the whole improvement as claimed in the specification. On examination of the case, it would appear that the real points at issue are comprehended in two or three peculiar features.

1st. The tubes *c c*, placed across a steam space, separating the oil-chamber and the receiver for holding the vapor or gas, said tubes serving as pipes for conveying the hydrocarbon from the oil chamber to the gas chamber, and also as heaters for maintaining its temperature.

2d. An external chamber surrounding the apparatus for retaining the vapors, whose temperature is maintained by heat radiating from the interior.

A third feature consists in an opening through the bottom plate or diaphragm, for admitting steam from a chamber below the oil chamber, into the oil chamber rising through the body of the oil therein contained. It is believed that the various combinations claimed will be found to depend upon one or more of these features, embodied in the claims.

167 The first of these features is found in the patent of Dickerson, the second in the Dickerson & Whipple patent. As to the third, if found at all, it is only in what might be regarded as an equivalent means of introducing the steam through a pipe in the oil chamber, shown by Dickerson & Whipple. But as it would appear that this pipe is only occasionally used and then merely for the purpose of stirring up the sediment and not at all for vaporizing purposes, it is not believed that any interference exists on this feature.

Ambler, in his preliminary statement, claims to have made the invention in dispute as early as May 9th, 1869. If it is found that the fact of his having done so is established, and if it be satisfactorily shown that he produced an operative machine, even if not in a perfected state, he will be entitled to an award of priority, as neither Dickerson or Whipple make any claim to the invention as early as does Ambler. It is alleged on their part that the invention made by Ambler was an unsuccessful experiment, and that whatever value there was in the invention was due to their efforts after Ambler had abandoned it.

Dickerson, in his preliminary statement, claims to have made the invention in 1868, but he does not show that the tubes *c c*, or their equivalents, were used in any of his original experiments, or that he used the exterior chamber or any equivalent therefor. He produces no drawings, models, or other exhibits, nor is there any evidence tending to show that the combinations claimed by Ambler, were ever known to, or invented by him, prior to the date of filing his application, viz., Sept. 16th, 1869, in which tubes corresponding with those of Ambler are shown, and which date must, therefore, in the absence of proof of earlier date, be accepted as that of Dickerson's invention.

The exterior gas chamber appears in the joint patent of Dickerson & Whipple, and Whipple, in his preliminary statement, fixes Oct., 1869, as the date of the invention in which he shared. It appears, from both their depositions, that Dickerson did not come to Washington until early in Sept., 1869, and consequently there could be no joint invention made by him and Whipple until after that date.

Ambler introduces in evidence a drawing, marked J. O. C., No. 16, dated May 9th, 1869, made by himself, and showing a machine similar in general principles to that afterwards patented by Whipple & Ambler, and which shows holes through the piston separating the steam chamber in the bottom of the cylinder from the oil chamber in the top of the cylinder, but not containing any of the other features involved in the interference.

It is alleged by Whipple & Brown that these holes were bored after Ambler left, but they were evidently made before Whipple claims to have made the invention.

Frederick Artos, a draughtsman, testifies that Mr. Ambler came to his office in this city, and employed him to make working drawings for a gas generating machine. He made these drawings under Ambler's directions. This was in May, 1869. The drawing is produced as Exhibit J. O. C., No. 12. This witness further says: "I have examined the full-sized working machine at the shop of Ellis & Co., and find the machine to correspond exactly in all its parts with the drawings made for the purpose. I have seen the machine in operation, and it produces heat and flame, and is capable of running a machine."

Artos also testifies that the original drawing, as amended, while in his hands, substantially represented by Exhibits F. A., No. 2. This drawing represents the tubes *c c*, and also the exterior gas chamber. Ira Corson, p. 65, identifies the drawing, Exhibit J. O. C., No. 12, as that used by him in manufacturing the machine, made at the shops of Pettit & Dripps, in this city in the summer of 1869.

He fully describes the tubes *c c* and the enveloping gas chamber as both included in that machine.

Smith Pettit, of that firm, testified that they built the machine in the summer of 1869.

He identifies Exhibit J. O. C., No. 12, and also Exhibit J. O. C., No. 15, and says the former represents the machine as built. That the machine was originally constructed without the exterior casing, but that was afterwards added, and he says that Exhibit No. 12, J. O. C., indicates the tubes *c c*, except in number as built in Exhibit J. O. C., No. 15.

J. B. Ellis, the owner of the shops occupied by Pettit & Dripps, also identifies the tubes *c c* as being shown in the drawing first brought to the shop by Ambler. W. W. Reynolds, p. 162, bookkeeper for Pettit & Dripps, identifies the tubes *c c*, and also the exterior casing as having been put on under the directions of Mr. Ambler. Witness also fixes the date when the exterior casing was put on, from charges made on the books, as being on the 21st of Aug., 1869 (p. 164).

The testimony shows that both the features designating the peculiar combinations claimed by Ambler were embodied in the machine built by him in the summer of 1869. Whipple fixes Oct., 1869, in his preliminary statement as the date of his invention, and to this he must be held.

168 It is also alleged that the experiments of Ambler, made under his arrangement with Whipple, were abandoned as failures about the 1st of Sept., 1869, and that Whipple & Dickerson, or any other persons, were at liberty to take up the experiments and conduct them to a successful issue. It appears that an arrangement was made between Ambler & Whipple for conducting a certain line of experiments in machines, for

generating gas from petroleum. Ambler was looked to as the man of ingenuity, while Whipple was to furnish the money.

Whipple does not appear to have originated anything of himself. It appears when their experiments had reached approximately to success, that Whipple had the account of Pettit & Dripps changed from Whipple & Ambler to his own name (see acc't in printed book, by agreement made part of the evidence), and refused to make further advances to Ambler.

It then appears that they separated, and subsequently Whipple & Dickerson went on with the experiments, and that Ambler went to New England, and that a few months afterwards, he having made other money arrangements, resumed his experiments. There is nothing in this to indicate abandoment to the public, nor can it be considered such delay on the part of Ambler as to authorize the allegations of such laches on his part as to amount to a forfeiture.

When Whipple withdrew his support, Ambler could not proceed, and though it is well settled that abandonment of an incomplete experiment as a failure, leaves the field open for the occupation of others, this cannot be predicated of a mere cessation of experiments, because an inventor has not the means for further prosecuting them, and therefore, perforce, stops until he obtains means for going on, and when he is able, resumes his work where he had left off.

Priority of invention is awarded to A. I. Ambler.

JOS. H. ADAMS,
Examiner of Interferences.

U. S. PATENT OFFICE.

Ex'd, J. A. R., Feb. 3d, 1872.

(Indorsed:) 1054. Ambler vs. Chouteau and others. Ambler's Exhibit No. . 1st decision of Pat. Office.

169 AMBLER'S EXHIBIT NO. .

No. 1387.

UNITED STATES PATENT OFFICE, *May* 9, 1872.

Before examiners-in-chief on appeal.

A. I. AMBLER *vs.* THOMAS S. DICKERSON AND DICKERSON & Whipple.	Interference. Petroleum gas.

In considering this case it may be well to reduce the immense mass of irrelevant matter lugged into it to the few facts established, and important to its correct determination.

It seems that Whipple had been trying some experiments in generating gas from benzine or petroleum. In March, 1869, Whipple sought out Ambler in Washington, and stating the fact that he had been so experimenting, "but had not succeeded in making a successful machine," induced

him to turn his attention to inventing one. Whipple was to furnish the means, and Ambler the brain work, as is fully shown by the part-
170 nership agreement and assignment, subsequently drawn up, and by the statements of the parties and other evidence.

In the absence of Whipple, Ambler proceeded to make drawings for a machine from which he had a tin model constructed. He also, in connection with his sons, commenced and carried on a series of experiments. The principal idea upon which Ambler seems to have been proceeding was to employ steam, at ordinary temperature, instead of superheating, and thus avoid danger. To make this effective, he seems to have supposed that it was essential to hold the gas as long as possible under heat and pressure.

The tin model was a working device and had an inner chamber for oil, an outer chamber for steam, and an upper chamber to receive the gas when generated. A number of small tubes conducted the gas from the oil chamber, passing through the steam chamber to the upper gas chamber.

A follower, like a piston-head, was fitted into the lower part of the oil chamber, and several perforated diaphragms in the upper part. Between these diaphragms filtering material was placed. The operation intended was to pass steam into the outer steam chamber, and hold it until the oil had attained sufficient heat to throw off gas. Then, through another pipe, steam was to be turned on, beneath the follower in the oil chamber, to force oil and gas upward. It was supposed that the filtering material would prevent the oil from escaping, while the gas, "liberated from globules of oil by the pressure," would find its way through to the upper chamber and be ready for use. This proved as dead a failure as it promised, and the principal product at the delivery pipe was petroleum.

But, in experimenting, whenever the steam got past the follower, as it often did on account of the bad packing, and thus came into direct contact with the petroleum, it was observed by Ambler that an increased supply of gas followed, which was instantly perceptible in the flame, and he called the attention of others to it at the time.

Whipple was present at a portion of these experiments, and was kept informed in regard to all of them.

It was finally resolved to have a patent taken out in the name of both and a full-sized machine constructed.

This was done. The new machine was constructed substantially like the model, and after drawings made by one Artos, under the instructions of Ambler. Ambler seems to have had the principal direction of the construction, though Whipple was present a great part of the time and paid the bills. While the work was in progress Whipple had the account changed in the books of the firm doing the work, from "Whipple and Ambler" to "Whipple." This was August, 1869. The machine was finished in August, and on trial proved no better than the tin model. Up to this point there is little, if any, disagreement in the statement of the parties. But here it became necessary to settle two questions of fact in dispute. Ambler avers that, reflecting upon the result following the escape of steam into the oil, while making the experiments on the model, he proposed to drill holes in the piston-head and fasten it down so as to pass steam directly through the petroleum. He also avers that, wishing to keep the gas vapor at as high pressure and heat as possible, he conceived and suggested the carrying the gas chamber down outside the steam chamber in the form

of a jacket. Both of these things were done, and the questions to settle are, at whose suggestion and at what time.

171 Whipple avers that both were done after Ambler left the works and "gave up the machine in disgust." But, though he claims that the "jacket was his own idea, and invented for the purpose of protecting the generator from the atmosphere" (which, he says, "was no better than it was before the addition"), yet he nowhere claims that the letting of steam directly into the oil was his conception, but says "he tried it as an experiment," etc.

Now, Ambler is sustained and corroborated by Artos, to whom he explained the outside casing, and had him indicate it in pencil-marks on the drawings, by Pettit, the builder of the machine, Reynolds, the book-keeper, Corson, who put on the outside casing under Ambler's directions, to say nothing of Ambler's two sons.

It is also incredible that Whipple should have conceived the idea of fastening down the piston, since the whole case shows that the operation of that piston, in connection with the drip-stone and other filtering substances, was what he chiefly relied upon for ultimate success.

Dickerson himself swears that Whipple said if he could "force it through English dripping-stone there would be great results from it," and this after Ambler had gone, and he claimed to have the whole control. He also says that Whipple failed to copy his specification according to his instructions, but wanted to put in his piston-rod, and insisted on its being inclosed in his (Dickerson's) patent, and we find "this piston-rod" is accordingly embraced in the claim. As regards the jacket, it is also evident, from what we have quoted from the evidence, that he never conceived or understood its chief office-work in connection with such a machine as Ambler's, where only ordinary steam is used, and a portion of it brought in direct contact with the petroleum, and the same may be said of Dickerson, and he so states that the jacket was used to contain steam for heating the oil, etc. But, so far as the time of making these changes is concerned,

172 Whipple is sustained by Brown and Chaney, two workmen who assisted in the construction of the machine, and afterwards continued in Whipple' employment, one of them accompanying him to Chicago and St. Louis. Both of these men think that the drilling of the piston-head and the putting on the jacket was after Ambler left.

But they are evidently mistaken in this, as the charges on the books, as shown by Reynolds, show the iron for the casting to have been ordered before that event, and the balance of the testimony is most decidedly in favor of Ambler's version, as is also the whole history of the case. In fact, the only thing about the machine which Whipple distinctly lays claim to is the outer casing, and this Artos shows was Ambler's original conception, suggested to him and put in pencil on the drawings as early as May or June before. Ambler and Whipple parted company about the first of September, 1869. Ambler says he left because Whipple required him to

173 and refused to advance further means to carry out their joint operations. Whipple avers that he "retired in disgust," etc. It is of but little importance what occasioned this seperation. Whipple remained in possession of the machine, and as he says, "experimented (with it) some ten or twelve days longer, and finding the machine was no account, I gave it up." It seems that before this Whipple had seen Dick-

erson in Chicago and communicated with him in regard to what was being done at Washington, and as to future plans, etc., and had been advised to get rid of Ambler. About the 3d of September Dickerson arrived in Washington and took rooms adjoining Whipple's at the hotel. They had frequent conferences and visited the Ambler & Whipple machine, and tried experiments. Dickerson finally drew up specifications for a patent, and Whipple amended and copied, and a patent was applied for in Dickerson's name September 16th. This specification contemplated a machine precisely like Ambler's, leaving out the outside jacket, changing the location of the piston, and inserting pipes through the oil chamber for superheated steam. Whipple says the principle features were the invention of Dickerson, and "the most important of which were the tubes for vaporizing oil by the introduction of superheated steam into the same." By "the same," he means "the tubes," as no superheated steam was passed through the oil, though small jets of the size of a needle point were let into the bottom of the oil chamber occasionally to stir up the oil and prevent the settling of sediments, and Whipple says the same was "probably not used once a day." And Dickerson says, "the same was not used to vaporize, but to stir up the petroleum occasionally."

174

Some negotiations took place between Ambler and Whipple for a settlement of differences, and it was supposed that a compromise had been effected, when on the 24th of September, Dickerson assigned a half interest in the pending application to Whipple.

The first machine was commenced about the 1st of October, according to Whipple and Dickerson, and was constructed under the sole direction of Whipple, who took the dome of the old Ambler machine and carried it into the new structure, and the outside casing he used for an independent gas-receiver. Superheated steam was employed and a grand success seems to have followed.

175

Dickerson did nothing but furnish funds to Whipple. Afterwards, in the spring of 1870, Whipple reconstructed the machine by putting back the gas-receiver as Ambler had left it, forming a jacket on the outside of the generator, and a new patent was taken out in the name of Dickerson and Whipple May 3d, 1870.

Ambler in the mean time had been pursuing his original ideas in a series of experiments in Boston and Washington, and having made new converts, and procured pecuniary aid, took up the matter where he left it, when he parted company with Whipple, and it would seem has carried it out undoubted success. We must remember that the theories of the two parties contestant are widely different, Ambler using ordinary steam, and bringing a portion of it in direct contact with the oil, that it may take up a portion of its volatile parts and leave a residuum that shall be useful for its lubricating properties, while the mingled vapor of water and oil, being held under heat and pressure, shall become thoroughly united and inlaid, and be highly inflammable and useful for fuel and light, etc. Dickerson, on the other hand, by the use of superheated steam, causes a destructive distillation of the petroleum, using nearly the whole for light or fuel, often being mingled with superheated steam. Both are undoubtedly successful in their several ways, though both are using or wishing to use the same features in similar machines. Dickerson says that he had never used su-

176

perheated steam in any of his experiments until he came to Washington. He had, in fact, not reduced his theory to practice when he took out his patent. He had, however, heard the effect described by certain
177 Germans and others at Chicago. He carefully examined the different patents found in the Patent Office before he made out his specifications. The most that he did, therefore, was to take Ambler's machine, which he inspected, and took his draftsman, Phillips, to examine as a model, and suggested the introduction of pipes through the oil chamber as described, and discarded the piston as then used, and outside jacket, and thus adapted it to the use of superheated steam. But Whipple went on and put up the machine as described in the specifications. There was the same cylinder for it, the chamber surrounding it, the top, bottom, and sides for steam, the dome for the gas, and the tubes leading from the inner oil-chamber, through the steam chamber to the dome, and a small aperture for letting a jet of steam to the oil chamber. All of these things were in the Ambler machine, and, as we have seen, were devised by him. What Whipple afterwards did was to restore the jacket, also devised by Ambler.

178 Having found that all the features in controversy were the old Ambler & Whipple machine, and devised by him, we must, of course, find priority in his favor.

As regards abandonment, the evidence of Dickerson alone touching the claims of Ambler, and the efforts at settlement, sets that question at rest.

Holam, a witness for Whipple and Dickerson, also states that Ambler said he had been ordered to "keep away," that the machine was good for nothing, but he could "make a machine that would do so and so," and that he returned from New England and commenced experiments again in December, trying the effect of passing steam directly through the oil, etc., and was highly elated, and said he could use the residuum for lubricating oil, etc.

R. L. B. CLARKE.

We concur in affirming the decision of the examiner in charge of interferences.

I. H. HODGES,
I. M. THATCHER,
Examiners-in-Chief.

(Indorsed:) 1054. Ambler's Exhibit No. . Second decision in the Pat. Office by the board of examiners-in-chief.

179 In the matter of the interference between the application of A. I. Ambler, and the patents of Thos. S. Dickerson, and Dickerson and Whipple, generating gas from petroleum. Appeal from the board of examiners-in-chief.

The issues in this interference is purely one of fact, that of priority of invention, unincumbered by any of the collateral issues frequently connected with it. The question of abandonment has been raised against Ambler, but I do not regard it as worthy of any discussion whatever here. Whether he severed his connection with Whipple in this city voluntarily or not, is not of the slightest consequence, since it is fully shown that he

made other connections, and with reasonable promptness appeared here seeking a patent for his invention. He has neither been so slow nor
180 so mild in pushing his invention and his rights, as to be at all liable to the charge of abandonment.

In view of the considerable time that has been necessarily consumed in examining the voluminous documents and testimony presented in this case, in order to arrive at its decision, and in view of the fact the primary examiner and the board seem to have given it very ample consideration, and very elaborate discussion, I do not feel called upon to go into a critical review of the evidence here to show how and why I have arrived at the conclusion that its weight is decidedly in favor of Ambler. I have no hesitation in confirming the decision of the board, awarding priority of invention to him.

M. D. LEGGETT,
Commissioner.

(Indorsed:) 1054. Ambler's Exhibit No. . Third decision in the Pat. Office, M. D. Leggett, Commissioner.

Ex'd August 21st, 1872.

(Here follows diagram marked page 181.)

182 UNITED STATES PATENT OFFICE.

Augustin I. Ambler, of Washington, District of Columbia, assignor of one-half his right to John Butler, of New York City. Improvement in apparatus for generating gas from petroleum. Specification forming part of letters patent No. 131240, dated September 10, 1872.

SPECIFICATION.

I, Augustin I. Ambler, of the city of Washington, in the District of Columbia, have invented certain improvements in the construction of machines or apparatus for generating gas or vapor from petroleum, &c., which I call A. I. Ambler's hydrocarbureter, and of which the following is specification:

NATURE AND OBJECTS OF MY INVENTION.

The first part of my invention consists in the mechanical construction of an apparatus for generating gas or vapor from hydrocarbon oils, and of utilizing the same in flame and heat, by the use of steam at ordinary working temperatures.

To secure a practical operation of the machine and effect these results I use the steam-space D, so constructed in the combination as to form a steam-chamber above the oil-chamber and below the gas-dome, as a part thereof. Passing through this chamber, between the plates C′ and C′, are tubes C C, as conduits for the passage of the gas from the oil-chamber to the dome. The communication between the steam-space D around the oil-chamber and the chamber between the plates C′ and C′ enables me to obtain a free circulation of the steam around and through the cluster of

tubes C C. By this means I am enabled to heat and rarefy the gas or vapor in its passage from the oil-chamber through the tubes C C to the gas-dome for use. This chamber between the plates C′ and C′ affords a heating surface to the lower part of the gas-dome, and thus prevents the condensation of the vapors by retaining a more uniform temperature upon the gas or vapor in the dome, and is of great practical value to the successful operation of the machine.

DESCRIPTION OF THE ACCOMPANYING DRAWING.

Figure 1 is a section of the machine showing the internal arrangement of parts and the attachments thereto.

GENERAL DESCRIPTION.

A is an oil-chamber for containing the oil or hydrocarbon material for the purpose of supply to the hydrocarbureter. B is a gas or vapor dome. C C are tubes connecting plates C′ C′ at the top of the oil-chamber A and bottom of gas-dome B, and through which the gas or vapor ascends from the chamber A to dome B, and around which the steam by means of the chamber D has a free circulation. C′ C′ are the plates forming the bottom of gas-dome B and top of the oil-chamber A, forming steam-space D at the top of chamber A, through which pass the tubes C C. D is a steam-space around the oil-chamber A, and through which the tubes C C pass and are heated, thus heating the oil around and above the chamber A. D is a steam-chamber at the bottom of the oil-chamber A. E is an outside chamber formed by an outside casing and the outside walls of the steam-chamber D′ and passing over and around the dome B. This chamber is a gas or vapor receiver, from which the gas is taken off in the pipe I for use and for the purposes of condensation. F is a small hole with a valve covering it on top through the partition above the steam-chamber D′. This hole is to permit the steam to pass through (lifting up the valve) directly into the oil, so as to combine with the same and generate or liberate the gas for use in flame and heat, when the steam is not flowing into the oil, the valve being intended to prevent the oil from passing down into the steam-chamber D′. G is a steam-pipe communicating with the steam-chamber D′ and through which the steam passes into and through the hole F and into the oil-chamber A. H is a branch steam-pipe for conveying steam into the chamber D, for heating the walls of the chamber A and tubes C C. I is a pipe for the purpose of conveying the gas or vapor from the top of the outside chamber E to the burners, for use. The attachments are suitable exhausts or draw-off pipes, gages, valves, and stop-cocks for use. J is a supply-pipe for oil or material used to the chamber A.

The mode of operation is as follows: The chamber A, being supplied with oil or any suitable hydrocarbon substance, steam is let on by means of the branch steam-pipe H, and the oil is heated for a few moments so as to raise the temperature and take off the chill (a high heat not being necessary). The steam in the pipe G is let on, filling the chamber D′,
183 until the pressure is sufficient to raise the valve on the top of the hole F, when it is admitted into the oil direct in the chamber A,

when, in a few minutes, the gas or vapor is sufficiently generated or liberated for use, when it may, by opening the valve in the pipe, be carried forward for use, thus bringing to bear steam-heat and steam-force direct upon the oil or hydrocarbon employed, the steam and gas following the direction of the arrows in the several parts of the machine, as indicated. The amount of oil or hydrocarbon employed for practical use is shown by the waived line in the lower part of the chamber A. This may be increased or diminished as may be required, always leaving a sufficient room in the chamber A for gas or vapor to form and accumulate.

I am aware that steam-space around the oil-chamber of a gas-generator has been used to heat and vaporize the oil by the induction of steam therein; I therefore disclaim a steam-space, as such, to heat and vaporize the oil, merely. I am also aware that an air-chamber has been used between an oil-chamber and gas-dome, and I disclaim a mere chamber so located. I am also aware that plain cylinders have been used to generate gas by means of the induction of steam therein, and I do not claim a plain cylinder. My improvement consists, first, in connecting the steam-space D at the top of the oil-chamber and beneath the dome by means of the chamber between the plates C′ and C′, to obtain a free circulation of steam around and above the oil-chamber and beneath the dome, and around and through the cluster of tubes C C; and, second, in changing the air-chamber without tubes to a steam-chamber with tubes as conduits for the passage of the gas or vapor from the oil-chamber to the dome, for use, thereby affording great additional heating surface to the ascending gas and vapors, and by means of the steam-heat in the chamber between the plates C′ and C′, I maintain the temperature of the gas or vapor in the dome while in operation. By means of this chamber between the plates C′ and C′ I secure a free and unobstructed circulation of steam around and through the cluster of tubes C C above the oil and below the dome, as shown in the drawing, and by this additional heating-surface to the ascending vapors and gas I secure great advantages in the practical operation of the machine.

I do not, in this application, claim the process worked by the apparatus, nor broadly for the combination of a close chamber to contain the petroleum and the vapors evolved, and an induction steam-pipe and an eduction-pipe for conveying away the vapors evolved, and a pipe for drawing off the heavy residuum, with means for holding the mingled steam and petroleum vapor under the pressure and temperature due to the steam employed, such claims being involved in another application filed by me on the 4th day of May, 1870, and now in interference in a pending case between my said application and one filed by another party. I intend to claim herein certain distinctive features in the construction of the apparatus set forth, by which it is distinguished from the apparatus set forth in said interfering applications, and all others heretofore known, and nothing more.

Having thus described my invention, what I claim as new, and desire to secure by letters patent, is—

1. The tubes C C, the plates C′ C′, used in combination with an oil-chamber A and gas-dome B, substantially as shown, and for the purpose set forth.

2. The oil-chamber A, tubes C C, dome B, and steam-space D, said steam-space being united at the top by a steam-chamber formed by plates

made other connections, and with reasonable promptness appeared here seeking a patent for his invention. He has neither been so slow nor
180 so mild in pushing his invention and his rights, as to be at all liable to the charge of abandonment.

In view of the considerable time that has been necessarily consumed in examining the voluminous documents and testimony presented in this case, in order to arrive at its decision, and in view of the fact the primary examiner and the board seem to have given it very ample consideration, and very elaborate discussion, I do not feel called upon to go into a critical review of the evidence here to show how and why I have arrived at the conclusion that its weight is decidedly in favor of Ambler. I have no hesitation in confirming the decision of the board, awarding priority of invention to him.

M. D. LEGGETT,
Commissioner.

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Figure 1 is a section of the machine showing the internal arrangement of parts and the attachments thereto.

GENERAL DESCRIPTION.

A is an oil-chamber for containing the oil or hydrocarbon material for the purpose of supply to the hydrocarbureter. B is a gas or vapor dome. C C are tubes connecting plates C′ C′ at the top of the oil-chamber A and bottom of gas-dome B, and through which the gas or vapor ascends from the chamber A to dome B, and around which the steam by means of the chamber D has a free circulation. C′ C′ are the plates forming the bottom of gas-dome B and top of the oil-chamber A, forming steam-space D at the top of chamber A, through which pass the tubes C C. D is a steam-space around the oil-chamber A, and through which the tubes C C pass and are heated, thus heating the oil around and above the chamber A. D is a steam-chamber at the bottom of the oil-chamber A. E is an outside chamber formed by an outside casing and the outside walls of the steam-chamber D′ and passing over and around the dome B. This chamber is a gas or vapor receiver, from which the gas is taken off in the pipe I for use and for the purposes of condensation. F is a small hole with a valve covering it on top through the partition above the steam-chamber D′. This hole is to permit the steam to pass through (lifting up the valve) directly into the oil, so as to combine with the same and generate or liberate the gas for use in flame and heat, when the steam is not flowing into the oil, the valve being intended to prevent the oil from passing down into the steam-chamber D′. G is a steam-pipe communicating with the steam-chamber D′ and through which the steam passes into and through the hole F and into the oil-chamber A. H is a branch steam-pipe for conveying steam into the chamber D, for heating the walls of the chamber A and tubes C C. I is a pipe for the purpose of conveying the gas or vapor from the top of the outside chamber E to the burners, for use. The attachments are suitable exhausts or draw-off pipes, gages, valves, and stop-cocks for use. J is a supply-pipe for oil or material used to the chamber A.

The mode of operation is as follows: The chamber A, being supplied with oil or any suitable hydrocarbon substance, steam is let on by means of the branch steam-pipe H, and the oil is heated for a few moments so as to raise the temperature and take off the chill (a high heat not being necessary). The steam in the pipe G is let on, filling the chamber D′,
183 until the pressure is sufficient to raise the valve on the top of the hole F, when it is admitted into the oil direct in the chamber A,

when, in a few minutes, the gas or vapor is sufficiently generated or liberated for use, when it may, by opening the valve in the pipe, be carried forward for use, thus bringing to bear steam-heat and steam-force direct upon the oil or hydrocarbon employed, the steam and gas following the direction of the arrows in the several parts of the machine, as indicated. The amount of oil or hydrocarbon employed for practical use is shown by the waived line in the lower part of the chamber A. This may be increased or diminished as may be required, always leaving a sufficient room in the chamber A for gas or vapor to form and accumulate.

I am aware that steam-space around the oil-chamber of a gas-generator has been used to heat and vaporize the oil by the induction of steam therein; I therefore disclaim a steam-space, as such, to heat and vaporize the oil, merely. I am also aware that an air-chamber has been used between an oil-chamber and gas-dome, and I disclaim a mere chamber so located. I am also aware that plain cylinders have been used to generate gas by means of the induction of steam therein, and I do not claim a plain cylinder. My improvement consists, first, in connecting the steam-space D at the top of the oil-chamber and beneath the dome by means of the chamber between the plates C′ and C′, to obtain a free circulation of steam around and above the oil-chamber and beneath the dome, and around and through the cluster of tubes C C; and, second, in changing the air-chamber without tubes to a steam-chamber with tubes as conduits for the passage of the gas or vapor from the oil-chamber to the dome, for use, thereby affording great additional heating surface to the ascending gas and vapors, and by means of the steam-heat in the chamber between the plates C′ and C′, I maintain the temperature of the gas or vapor in the dome while in operation. By means of this chamber between the plates C′ and C′ I secure a free and unobstructed circulation of steam around and through the cluster of tubes C C above the oil and below the dome, as shown in the drawing, and by this additional heating-surface to the ascending vapors and gas I secure great advantages in the practical operation of the machine.

I do not, in this application, claim the process worked by the apparatus, nor broadly for the combination of a close chamber to contain the petroleum and the vapors evolved, and an induction steam-pipe and an eduction-pipe for conveying away the vapors evolved, and a pipe for drawing off the heavy residuum, with means for holding the mingled steam and petroleum vapor under the pressure and temperature due to the steam employed, such claims being involved in another application filed by me on the 4th day of May, 1870, and now in interference in a pending case between my said application and one filed by another party. I intend to claim herein certain distinctive features in the construction of the apparatus set forth, by which it is distinguished from the apparatus set forth in said interfering applications, and all others heretofore known, and nothing more.

Having thus described my invention, what I claim as new, and desire to secure by letters patent, is—

1. The tubes C C, the plates C′ C′, used in combination with an oil-chamber A and gas-dome B, substantially as shown, and for the purpose set forth.

2. The oil-chamber A, tubes C C, dome B, and steam-space D, said steam-space being united at the top by a steam-chamber formed by plates

C′ C′, and through which pass tubes C C, substantially as shown, and for the purpose set forth.

3. The steam-space D, formed in part by means of plates C′ and C′, uniting and communicating with steam-space D at the top of the oil-chamber A, and through which pass tubes C C, and the tubes C C used in combination with oil-chamber A, gas-dome B, and gas-chamber E, substantially as shown, and for the purposes set forth.

4. The gas-chamber E arranged to envelop the apparatus, substantially in the manner set forth.

5. The steam-chamber D′ used in combination with steam-pipe G, hole F, and oil-chamber A, substantially as shown, and for the purpose set forth.

6. The steam-pipe G, chamber D′, hole F, used in combination with oil and gas-chamber A, tubes C C, and dome B, substantially as shown, and for the purpose set forth.

7. The steam-pipe H and chamber D, combined with tubes C C and plates C′ C′, substantially as shown, and for the purpose set forth.

A. I. AMBLER.

Witnesses:

JAMES S. GRINNELL,

W. R. AMBLER.

184 AMBLER'S EXHIBITS No. 16.

An agreement, made and entered into this 23rd day of December, A. D. 1871, by and between Thomas S. Dickerson and Rodney M. Whipple, of the city of Chicago, county of Cook and the State of Illinois, of the first part, and the Missouri Liquid Fuel and Illuminating Company, a corporation organized and existing under the laws of the State of Missouri, of the second part.

Whereas the said parties of the first part obtained letters patent of the United States for "improvement in the manufacture and application of gas from petroleum, etc.," bearing date the 12th day of October, 1869, numbered 95665, and also obtained certain other letters patent of the United States for improvement in process and apparatus for using liquid fuel for producing heat and light, which said last-mentioned letters patent bear date the 3rd day of May, 1870, and numbered 102662; and

185 Whereas said parties of the first part have, by an instrument under their hands and seals, of even date herewith, granted, sold, assigned, transferred, and set over unto James G. Blunt and Merritt H. Insley all the right, title, and interest which they had in said invention, as secured by both said letters patent, together with any extension of said letters, or either of them; and

Whereas the said James G. Blunt and Merritt H. Insley have, by an instrument under their hands and seals, of even date herewith, granted, sold, assigned, transferred, and set over all of the interest acquired by them by reason of the assignment aforesaid unto the said party of the second part:

Now, this indenture witnesseth that the said party of the first part, for and in consideration of the sum of five dollars to them in hand paid, and

in further consideration of the agreements hereinafter contained, on the part of the said party of the second part, hereby covenant and agree to convey unto the said party of the second part, its assigns, upon demand, any and all improvements which they, or either of them, may make in, to, or upon the inventions patented by the letters numbered 95665 and
186 102662, or upon, in, or to either of the inventions patented as aforesaid.

The said party of the second part, in consideration of the foregoing, hereby agrees to pay the costs and expenses of the proposition of the assignment or assignments to it of any and all improvements so made as aforesaid by said party of the first part.

And to the true and faithful performance of all the agreements herein contained on the part of the said Thomas S. Dickerson and Rodney M. Whipple, they bind themselves, their and each of their heirs, executors, and administrators, to the said party of the second part and its assigns; and the said party of the second part, to the true and faithful performance of all the agreement' herein contained on its part, binds itself and assigns to the said parties of the first part, their heirs, executors, and administrators.

In testimony whereof, we, the said Thomas S. Dickerson and Rodney M. Whipple, have hereunto set our hands and seals, and the said party of second part hath caused these presents to be sealed with its corporate seal, and signed by its president and secretary, the day and year first written.

187 THOMAS S. DICKERSON. [SEAL.]
RODNEY M. WHIPPLE. [SEAL.]

Witness:
H. F. WILLARD.

CHARLES P. CHOUTEAU,
President.
STILSON HUTCHINS,
Secretary.

AMBLER'S EXHIBIT No. —.

UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of an assignment recorded in Liber C^{15}, page 253.

In testimony whereof, I, Ellis Spear, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this seventeenth day of November, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the one hundredth.

ELLIS SPEAR,
Acting Commissioner.

(Indorsed:) 1054. Ambler's Exhibit No. . Contract of Whipple & Dickerson with the L. F. & I. Company.

957——6

188 AMBLER'S EXHIBIT No. 17.

To all whom these present' shall come:

Be it known that we, Charles P. Chouteau, Gerard B. Allen, Charles H. Peck, Stilson Hutchins, Theodore Laveille, George H. Rea, A. C. Ellithrope, John Kupferle, James G. Blunt, M. H. Insley, and Charles P. Warner, Frank Gregory, and Oliver B. Filley, being desirous of forming a manufacturing and business company, under the provisions of article vii, chapter 37, of Wagner's Missouri Statutes, have associated ourselves together and hereby certify:

First. The corporate name of said company shall be the Missouri Liquid Fuel and Illuminating Company.

Second. The objects for which this compa' is formed are to smelt ores of all kinds, manufacture illuminating gas, create steam for all purposes where power is required, manufacture glass, railroad iron, railroad chairs and fastenings, spikes, nails, all kinds of iron and steel, and machinery of every description, and to carry on manufacturing in all its branches
189 where heat, power, and light, or either of them, are required, and for the production of heat and light, or either, under the Whipple and Dickerson patent for vaporizing petrolium and other oleaginous substances; also to license or sell any and all rights acquired by said company in and to said patent.

Third. The amount of capital stock of said company shall be five hundred thousand dollars, and the number of shares of which said capital stock shall consist is five thousand. The price of each share shall be one hundred dollars.

Fourth. The number of directors of said company shall be thirteen, and the names of the same who shall manage the affairs of said company for the first year are Charles P. Chouteau, Gerard B. Allen, Charles H. Peck, George H. Rea, Stilson Hutchins, Theodore Laveille, A. C. Ellithrope, Charles P. Warner, James G. Blunt, M. H. Insley, John Kupferle, Frank Gregory, and Oliver B. Filley.

Fifth. The business of said company shall be carried on in the city and county of St. Louis and State of Missouri.

Witness our hands this 18th day of December, 1871.

190 CHARLES P. CHOUTEAU, GEORGE H. REA,
GERARD B. ALLEN, THEODORE LAVEILLE,
CHARLES H. PECK, STILSON HUTCHINS,
ALBERT C. ELLITHROPE, FRANK GREGORY,
CHARLES P. WARNER, JAMES G. BLUNT,
JOHN KUPFERLE, M. H. INSLEY,
O. B. FILLEY.

(Indorsed:) 1054. Ambler's Exhibit No. . Articles of association of L. F. & I. Company.

191 [Liber C[15], p. 251.]

(Copy.)

[Canceled 5.]

Whereas Thomas S. Dickerson and Rodney M. Whipple, both of the city of Chicago, in the State of Illinois, did obtain letters-patent of the

United States for *a* certain "improvements in the manufacture and application of gas from petroleum," &c., which letters-patent bear date the 12th day of October, 1869, numbered 95665; and

Whereas the said Thomas S. Dickerson and Rodney M. Whipple also did obtain certain other letters-patent of the United States for an "improvement in process and apparatus for using liquid fuel for producing heat and light," which said last mentioned letters-patent bears date the 3d day of May, 1870, and numbered 102662; and

Whereas the said Thomas S. Dickerson and Rodney M. Whipple, by an instrument under their hands and seals bearing date the 23d day of December, 1871, sold, assigned, transferred, and set over unto James G. Blunt and Merritt H. Insley all the right, title, and interest which they, the said Thomas S. Dickerson and Rodney M. Whipple, had in the said invention as secured to them by said letters-patent, numbered re-
192 spectively 95665 and 102662, for, to, and in the entire State of Missouri, and in no other place or places, to the full end and term for which said letters numbered as aforesaid were granted, and for the term of any extension of the said patent, or either of them:

Now, therefore, this indenture witnesseth that we, the said James G. Blunt and Merritt H. Insley, for and in consideration of the sum of eighty-three thousand dollars, to us in hand paid by the Missouri Liquid Fuel and Illuminating Company, the receipt whereof is acknowledged, and in the further consideration of four hundred and seventeen thousand dollars in fully paid up stock of said company, this day delivered to us, have granted, sold, assigned, transferred, and set over, and by these presents do grant, sell, assign, and set over, unto the said Missouri Liquid Fuel and Illuminating Company and its assigne's all the right, title, and interest which we have in the said inventions, as *as* secured by said letters-patent numbered as aforesaid, by reason of the assignment aforesaid,
193 for, to, and in the entire State of Missouri, and in no other place or places, the same to be held and enjoyed by the said Missouri Liquid Fuel and Illuminating Company for its use and benefit, and for the use and benefit of its assigns to the full end and term for which said letters-patent numbered as aforesaid are granted, and for the term of any extension of said patent, or either of them, as fully and entirely as the same would or could have been held and enjoyed by us had this assignment not been made.

In testimony whereof we hereunto set our hand' and affix our seals this 23d day of December, 1871.

JAS. G. BLUNT. [SEAL.]
MERRITT H. INSLEY. [SEAL.]

Sealed and delivered in presence of—
E. C. DARLEY.
WELLS VANDENHOLT.

Recorded Jan. 13, '72.

(Indorsed:) 1054. Ambler's Exhibit No. . Blunt & Insley to L. F. & I. Company. Assignment.

194 AMBLER'S EXHIBIT NO.

In the circuit court of the United States, eastern district of Missouri.

THE MANUFACTURERS' BANK OF CHICAGO, plaintiff,
against
STILSON HUTCHINS, DEFENDANT.

The defendant moves the court to grant him a continuance in this cause to the next term of this court, for the reasons set forth in the following affidavit.

STILSON HUTCHINS,
By H. A. GLOVER,
His Attorney.

195 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

St'lson Hutchins, being duly sworn upon his corporal oath, deposes and says that he is the defendant in the above-entitled cause, and the declaration in which case was filed in this court on the first day of August, in the year 1872, and summon*ed* issued thereon, returnable to the September term of the court, and to the third Monday of said month; that said summons was duly served upon this deponent on the 30th day of August, in said year, and issue joined in the cause on the 2d day of October, in the year 1872; that affiant believes he cannot safely go to trial at the present term of the court by reason of the absence of witnesses and of their testimony; that said witnesses, and each of them, are material witnesses in this behalf; that the names of the said absent witnesses are Rodney M. Whipple and George H. Rea; that the occupation of said Whipple is that of an operator, and his residence generally or nominally the city of Chicago, in the State of Illinois; that the residence of George H. Rea is the city of St. Louis, State of Missouri, and his occupation president of the
196 Mississippi Valley Navigation and Transportation Company; that there *is* no other witnesses, nor are there *there* any other witnesses in attendance upon the court, or within the reach or process of the court, upon whom affiant can safely rely to prove the particular facts which the absent witnesses are expected to prove; that the said absent witnesses are not, nor is either of them, absent by consent, connivance, or procurement of affiant; and affiant further saith that the foregoing suit is instituted upon a certain promissory note, dated St. Louis, December 23d, 1871, payable six months after date, to the order of himself, affiant, for the sum of ($5,000) five thousand dollars, at the Second National Bank, St. Louis, Mo., by himself endorsed, and purporting to be endorsed likewise by James G. Blunt and one M. H. Insley; that said note was made at the said time and indorsed by affiant under the following circumstances: That prior to the making and endorsing of the said promissory note sued on the said Rodney M. Whipple and one Thomas S. Dickerson appeared in the city of St. Louis, in the State of Missouri, and represented to certain parties, including this defendant, that they
197 were the owners of valuable letters-patent, granted by the United States of America to the said Thomas S. Dickerson and to the said

Thomas S. Dickerson and Rodney M. Whipple, for generating gas from petroleum, and that thereby they were the sole and exclusive owners of the right to so generate gas from petroleum by the agency of steam throughout the United States, and that the said Dickerson and Whipple had sold and conveyed to the said James G. Blunt and M. H. Insley a part of their rights under the said patent within and for the territory or State of Missouri, and that the said named parties were desirous of selling such pretended right under the said patent, and the said Dickerson and Whipple proposed to said parties, together with this defendant, that a company should be organized and created within the State, and under the laws thereof, for the purchase of the said pretended right to generate gas from petroleum by the agency aforesaid, and in consequence of the said representation the said named parties, together with this defendant, proceeded to organize, and did organize, under the general incorporation law of the State, a
198 company styled the Missouri Liquid Fuel and Illuminating Company, the sole object of the organization of said company being the purchase of the right to so generate gas from petroleum by the agency of steam within the State of Missouri, under the said letters-patent, and to so generate gas thereunder and to use the same in application to general manufacturing purposes, and to which the same might be applicable. That said company thereupon purchased from the said Dickerson and Whipple and the said Blunt and Insley the said pretended patent-right for the State of Missouri, and the said note sued on in this action was given in part payment of the purchase of the said pretended patent-right for the State of Missouri. That the said George H. Rea was appointed treasurer of said company, and the said note, together with a large number of other notes given by other parties, were placed in the hands of said Rodney M. Whipple, and by him to be placed in the hands of the said George H. Rea as treasurer aforesaid, to be by him retained and held until it was or could be ascertained that the said parties, Dickerson and Whipple, had a good and lawful and valid right
199 under their said letters patent so granted as aforesaid. And affiant further saith that the said alleged right so sold and attempted to be transferred to the said Missouri Liquid Fuel and Illuminating Company was claimed by the said Dickerson and Whipple under letters patent granted by the United States to the said Thomas S. Dickerson, bearing date October 12th, 1869, and to the said Dickerson and Whipple bearing date the 3d of May, 1870, and were obtained on clandestine, fraudulent, and surreptitious applications by them, the said Dickerson and the said Dickerson and Whipple, and for that which they did not discover or invent, and which was the discovery and invention of another party, to wit, one A. I. Ambler, of Washington City, District of Columbia, and were void for that reason. And the said A. I. Ambler has instituted a suit in the District of Columbia to enforce a legal recognition of his rights as the original discoverer and inventor of the manufacture of gas from petroleum by the agency of steam and the machine or apparatus by which the result could be obtained, and which suit is still, as this affiant is informed
200 and believes, pending and undetermined; and the Commissioner of Patents of the United States, in a proceeding for that purpose, decided and adjudged, upon proper application made to him by said A. I. Ambler, the priority of the said invention to the said Ambler. And affiant further saith that since the last term of this court he has made dil/igent

effort to ascertain the whereabouts of the said Whipple, so as to be able to procure his testimony on the trial of this cause; that the business of said Whipple being that of an operator or speculator, in the *per*suit of his business he is, as affiant is informed, in the habit of being at different points and cities of the Union in *per*suit of his business.

That very shortly after the trial of this cause, affiant, in answer to a letter to him, said Whipple, received a letter from said Whipple informing affiant that he, said Whipple, would come down to the city of St. Louis from Chicago and arrange the said note satisfactorily to affiant, by payment or otherwise, and affiant confidently expected that he would come to the city of St. Louis, as he had promised affiant by letter he would do, and that he would either protect this affiant from said note
201 by payment or otherwise, or that in the event of his failure to do so, that this affiant would be able to secure the testimony of said witness by deposition; that affiant is informed and believes that at the said time he, said Whipple, caused rooms to be engaged by telegraph at the Southern Hotel, in this city, for his promised visit to St. Louis for the purpose aforesaid, but affiant further says that the said Whipple did not come at said time as he promised to do, and after waiting a few days, and finding that the said witness did not come to the city as he had promised, affiant telegraphed to the said Whipple, at the city of Chicago, inquiring why he had not come as he had promised, but received no answer; that deponent wrote repea'dly to a personal friend in Chicago, requesting the said party to inquire and inform affiant of the whereabouts of the said Whipple, and was informed by letter in reply that his correspondent could not learn where the said Whipple had gone; that in a very short time affiant heard through responsible parties that said Whipple was in the city of Washington, in attendance, defending against the suit
202 of said Ambler in reference to said letters patent; that affiant immediately telegraphed J. B. Motley, of Washington City, inquiring of and for the said Whipple, but could get no satisfactory information concerning him. Affiant afterwards learned that said Rodney M. Whipple had gone to California, on the Pacific coast, for the purpose of selling the alleged patent right for that territory, but affiant was not, and is not up to this time, able to ascertain the whereabouts of the said Whipple, so as to be able to take his deposition; and affiant further saith that the said George H. Rea left the city of St. Louis some two or three weeks since for the South, and is now in the city of New Orleans, and the State of Louisiana; that affiant had no reason, and did not suppose and was not informed of the intended absence of the said George H. Rea; that the said witness is temporarily absent from the city of St. Louis and is expected to return, as affiant learns from inquiry at the Second National Bank, of which he was president and is a director, this morning,
203 in two or three weeks; and affiant expects to prove by said witness that the said note was delivered to the said Whipple contrary to the agreement under which they were deposited with him, said Rea; and, furthermore, facts and circumstances from which it is reasonably deducible that the said plaintiff is not a bona fide holder of the said note for value before maturity. This affiant further states that after the said Rea parted with the said note, as before stated, the said note was placed in the hands of a street broker and offered for discount or sale on the street; that so

soon as affiant learned the said fact he immediately notified the broker that he had a defense to said note by reason of failure of consideration; and affiant further saith that he will be able to prove by said witness that the plaintiff in this cause telegraphed down from Chicago to him concerning the character of said note, and whether it would be prudent or safe to become the purchaser of the said note, and was informed in answer by said Rea that the parties disputed their liability on said note, as said Rea has stated to this affiant; and, moreover, it appears that the plaint-
204 iff in this suit, from its own testimony on file in this case, bought the said note now in suit, together with other notes of the same character, at a discount at the rate of over sixty per cent. per annum. And further saith not.

STILSON HUTCHINS.

Subscribed and sworn to before me this 16th day of April, A. D. 1873.

H. C. GEISBERG,
U. S. Commissioner East. Dist. Mo.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true copy of affidavit for continuance in case No. of The Manufacturers' National Bank of Chicago, plaintiffs, against Stilson Hutchins, defendant, as fully as the same remain on file and of record in said cause in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said district, this eighth day of March, in the year of our Lord eighteen hundred and seventy-six.

[SEAL.]

M. M. PRICE,
Clerk of said Court.
By A. P. SELBY,
Deputy.

(Indorsed:) 1054. Ambler's Exhibit No. . Affidavit of Stilson Hutchins.

(Here follows diagram marked page 205.)

206 UNITED STATES PATENT OFFICE.

Thomas S. Dickerson and Rodney M. Whipple, of Chicago, Illinois. Improvement in processes and apparatus for using liquid fuel for producing heat and light. Specification forming part of letters patent No. 102662, dated May 3, 1870; reissue No. 5326, dated March 18, 1873.

To all whom it may concern:

Be it known that we, Thomas S. Dickerson and Rodney M. Whipple, both of Chicago, in the State of Illinois, have discovered and invented a new and improved mode of generating and manufacturing vapor or gas from oil, petroleum, and other oleaginous and carbonaceous substances, and using the same in combination with superheated steam, vapor, and gas from water and applying the same to purposes of illumination, heat, and

propulsion of machinery, the same being a new and useful invention and apparatus for the purposes aforesaid; and we do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawing forming a part of this specification, in which—

Figure 1 represents an elevation of the invention or machine, showing the external of the generator and its connections. Fig. 2 represents a sectional view of the generator, fire-box, superheater, and their connections taken in line of center.

Similar letters of reference in the several figures indicate corresponding parts.

The nature of our invention consists in producing vapor or gas from oil, petroleum, and other oleaginous and carbonaceous substances by means of superheated steam, and by uniting and using the same with other steam or superheated steam, operating in the manner hereinafter described. By using superheated steam for vaporizing the oil the formation and deposition of solid carbon is prevented by the diffusion and application of heat, in such manner and degree as is necessary without decomposing it, and, by mixing superheated steam with the vapor or gas thus produced, we increase the heat, combine the vapors, produce gases for heating and illuminating purposes, secure perfect combustion, and save largely in the amount of carbonaceous substances required.

To enable others skilled in the art to make and use our invention and apparatus, we proceed to describe its construction and mode of operation.

The generator for producing the gas or vapor is composed of a cylinder made of boiler-iron, with tube-heads riveted to the cylinder at each end. Inside of the tube-sheets, which are turned up about two inches, are cast or wrought iron rings, riveted to the tube-sheets and cylinder. This is done so that the heads may be bolted on to form a steam-space about two inches wide at each end of the cylinder. The tube heads or sheets are connected by copper tubes about five-eighths of an inch in diameter and about one-fourth of an inch apart inside the cylinder. The tubes connecting the steam-spaces are shown by letters A A, Fig. 2. The space in the cylinder around the tubes, as shown by letters *b b*, is filled with the oil. The upper head of the cylinder and the upper tube-sheet are connected and secured by bolts, as shown, with one large pipe or opening from the oil-space below to the dome above, thus allowing the gas or vapor to escape from the oil-space below into the dome above. Letters E E represent steam-spaces between the double heads at each end of the generator, which, being connected by the steam-pipes A A, secure complete circulation of the superheated steam and expose the oil in the generator to the greatest practicable amount of heating-surface. Letter F represents a steam-pipe from the superheater in the fire-box into the machine. Letter G represents an escape-pipe from the generator to carry off the condensed steam. Letter H represents a metallic tube leading from the oil-space in the generator or from the pipe I, and affixed to the outside of the machine with stop-cocks, suitably arranged, by which to ascertain the amount of oil in the generator. Letter I represents a pipe, through which the oil is pumped into the oil-space *b b*. Letter L represents the dome, which caps the machine, and is secured firmly by bolts and nuts to the generator below. Letter M represents the vapor or gas pipe leading from the top of the dome into the fire-

chamber. Letter N represents a superheater placed in the fire-box, composed of a cast-iron cylinder filled with scraps or pieces of iron, and secured with steam-tight heads, through one of which steam is introduced from the boiler, and through the other superheated steam is conveyed by the connecting-pipes to the machine. Letters Q Q represent the boiler, from whence steam is taken by pipe to the superheater. Letters R R represent the fire-box filled with flame from the burning vapors or gasses. Letter S represents a common steam-gage, by which to show the pressure of the gasses or vapors upon the machine. Letter I exhibits the pipe used for drawing the oil from the generator.

207

The mode of operating the machine is as follows, to wit: Steam is taken from the boiler Q by the pipe F into the superheater N and there superheated by the combustion in the fire-box R, from whence it passes with great force of pressure through the pipe F into the steam-space E in the generator, instantly filling the steam-tubes A A and the other steam-space E with the superheated steam, and thereby heating the oil in the space *b b* in the generator, so that it is immediately converted into gas or vapor and passes off through the opening J into the dome, and is then taken through the gas-pipe M to the point of combustion.

Suitable stop-cocks, valves, and wire-nettings should be placed between all the connections, always under the control of the engineer, by which the utmost safety may be secured.

The word "oil" whenever and wherever it occurs, and standing alone as descriptive of the material from which gas or vapor is produced in the generator, is intended to include and describe any and every oleaginous and carbonaceous substance which may or can be introduced into the generator in a liquid or fluid state.

The advantages gained by our invention are, that the apparatus is more compact and simple, making it especially adapted for use on locomotives and other portable engines.

We have described a suitable form of superheater, but any other known form of apparatus used for superheating steam may be employed.

We have described our invention with special reference to the burning of petroleum, coal-oil, shale-oil, and the like; but we do not limit ourselves to the use of those materials, since there is a large number of hydrocarbons which may be vaporized by superheated steam and then mixed and combined with steam or superheated steam, so as to produce the combustible gas or vapor, which constitutes one part of our invention.

We do not claim a gas-holder, except a dome, directly or indirectly connected with the generator, or any casing outside the walls of the generator, or any gas-chamber, arranged to envelop the generator, to be used as a gas-holder, as such have long been in use in portable gas-machines; nor do we claim a series of tubes to carry off the gas or vapor from the oil-space to the dome.

One single opening, such as are used in stills or gas-retorts, is all that is required. Any ordinary opening or pipe to pass off the vapor is all that is required, and is easily constructed, as the distance across the steam-space in the largest machines will not exceed two and one-half inches.

Having described our invention, parts of which are already secured to us by letters patent, numbered 95665, and dated October 12, 1869, reference thereunto being had, and without now claiming anything therein contained, what we now claim, and wish to secure by letters patent, is—

1. The improved apparatus herein described, composed of a steam-boiler, superheater, gas-generator, arranged and combined as described.

2. The steam-pipe F, to supply steam to the apparatus, for the purpose described.

3. The process herein described for burning petroleum and other vaporizable hydrocarbons, the same consisting in first vaporizing the gas-producing material by means of superheated steam and then mixing with the gas or vapor superheated steam, substantially as described.

The above specification signed by us.

THOMAS S. DICKERSON.
RODNEY M. WHIPPLE.

Witnesses as to the signature of Thos. S. Dickerson:
E. B. SHERMAN.
CHARLES E. BYRNE.

Witnesses as to the signature of Rodney M. Whipple:
JNO. D. PATTEN.
D. P. COWL.

(Here follows 2 diagrams marked pages 208 & 9.)

210 UNITED STATES PATENT OFFICE.

Thomas S. Dickerson, of Chicago, Illinois, assignor to himself and Rodney M. Whipple, of same place. Improvement in the manufacture and application of gas from petroleum, &c. Specification forming part of letters patent No. 95665, dated October 12, 1869; reissue No. 5327, dated March 18, 1873.

To all whom it may concern:

Be it known that I, Thomas S. Dickerson, of the city of Chicago, in the county of Cook and State of Illinois, have invented a new and improved mode of manufacturing and generating gas from petroleum and other oleaginous substances, the same being a new and useful machine for the purpose aforesaid; and I hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawing forming a part of this specification, in which—

Figure 1 represents an elevation of the invention, showing external of gas generator and its connections. Fig. 2 represents a sectional view of generator, fire-box, gas-burners, and connections, taken in line of center.

Similar letters of reference in the several figures indicate corresponding parts.

The nature of my invention consists in producing gas from crude or refined petroleum or other oleaginous substances by means of superheated steam operating in the manner hereinafter described.

I am aware that many attempts have been made to use petroleum for generating steam, and for producing heat and light, and its large heat-producing power especially recommends it; but the difficulties heretofore met with from the deposits of carbon and consequent filling up of the pipes, and also in obtaining it in a manageable form, have prevented its use. By the application of superheated steam to form the gas I prevent the deposition of carbon, and by first producing gas before burning I

avoid the difficulties where the liquid is introduced directly into the fire-box or furnace.

The machine is simple in its construction, and the result almost beyond comprehension.

To enable others skilled in the art to make and use my invention, I will proceed to describe its construction and mode of operation.

The generator for producing the gas is composed of a cylinder made of boiler-iron, with cast-iron heads, to which the cylinder is riveted. The heads are cast with a hollow or steam space, and connected with each other, through the cylinder, by tubes, as shown by letters A A. The space in the cylinder around the tubes, as shown by letters *b b*, is filled with oil. The gas escapes through the head of the cylinder into the dome by an opening, as shown by letter J. Letters E E represent the steam-space at each end of the cylinder, which it will be seen allows a complete circulation of the steam. Letter F represents the steam-pipe coming from the boiler. Letter *f* represents the steam-pipe leading into the steam-space E, with suitable stop-cocks. Letter G represents the escape-pipe from the steam-space E for carrying off the condensed steam. Letter H represents the oil-gage, by which the amount of oil in the generator can be ascertained at any time. Letter I represents the pipe to feed the machine with oil. Letter J represents the pipe or opening from the oil-space to the dome above. Letter M represents the gas or vapor pipe leading from the machine to the fire-chamber, which is provided with suitable stop-cocks, and also a check-valve which only opens with the pressure of the gas, and closes when the pressure is removed. Letter R represents the fire-box and burners, showing one way of consuming the gas for fuel. Letter N represents the coil in the fire-box by which the steam is superheated.

The mode of operating the machine is as follows: Steam is taken from the boiler, which passes down through the fire-box R and through the steam-coil N into the main steam-pipe marked F. From thence it is let into the steam-space E E, which fills the tubes in the cylinder, which heats the oil in the cylinder, which immediately passes off into gas or vapor through the opening J into the dome, where it passes from its own pressure into the tube leading to the fire-chamber. Suitable stop-cocks and valves should be placed between all of the connections, which should always be under the control of the engineer.

I do not claim generating gas from petroleum by passing steam directly through the oil, as that has been long used to remove the lighter portions from petroleum; nor do I claim to vaporize petroleum by fire heat alone direct to the generator, as that produces carbonization in the pipes and a clogging up of the apparatus; nor do I claim a series of tubes to
211 carry off the gas or vapor from the oil space to the dome. One single opening, such as is used in stills or gas-retorts, is all that I use. Any ordinary opening to pass off the vapor or gas is all that is required, and is easily constructed, as the distance across the steam-space in the largest machines will not exceed two and one-half inches.

Having thus described my invention, what I claim as new, and wish to secure by letters patent, is—

1. The generator, composed of steam-space E E, tubes A A, oil-space *b b*, steam-pipe F, when used for the manufacture of gas from petroleum and any other oleaginous substance, substantially as shown, and for the purpose set forth.

2. The combination of the generator and dome.

3. The use and application of petroleum or other oleaginous substance for generating steam and for heating and illuminating purposes, by the combination and the process herein described, substantially as shown, and for the purposes set forth.

4. The combination of a steam superheater, a connecting steam-pipe, and a tubular generator, so as to form a gas or vapor apparatus, substantially as described.

5. The tubular generator, composed of a series of tubes connected by the flanged heads at opposite ends, and the whole surrounded by a boiler-plate covering, or its equivalent, substantially as shown, and for the purposes set forth.

THOMAS S. DICKERSON.

Witnesses:
E. B. SHERMAN.
CHARLES E. BYRNE.

212 AMBLER'S EXHIBIT No. .

Supreme Court of the United States. No. 24. October term, 1874.

AUGUSTIN I. AMBLER, APPELLANT,
vs.
RODNEY M. WHIPPLE AND THOMAS S. DICKERSON.
} Appeal from the supreme court of the District of Columbia.

On petition for rehearing, Mr. Justice Miller delivered the opinion of the court.

It is the well-settled rule of this court, to which it has steadily adhered, that no rehearing is granted unless some member of the court, who concurred in the judgment, expresses a desire for it, and not then unless the proposition receives the support of a majority of the court. For this reason, and for the better reason that the pressure of business in the court does not permit it, no reply to the petition whatever is allowed from the other side or given by the court.

The petition for rehearing in this case presents some features which seem to require a departure from this rule. It states that the hearing in this court was had on an imperfect record, a large part of the matter which
213 was before the court below having been omitted in the transcript certified to this court, and it attempts to show by affidavits that, owing to the death of one counsel and the substitution of others, there was no laches or neglect for which the appellee should be held responsible in failing to examine and perfect the record before the hearing; a transcript of the parts of the record which were omitted in the first transcript accompanying the petition for rehearing.

If this statement be correct, and if the omissions in the transcript on which the case was heard are material to the decision of the case, it presents a strong appeal for reargument; and we have, therefore, given a careful consideration to the very full petition for rehearing, and availed ourselves of its copious references to the original and supplemental transcripts.

But an examination of the proceedings in the case in this court, sheds

much light on one of the questions suggested in the affidavits. It appears that the appeal was docketed and dismissed February 19th, 1872, because the record had not been filed within the time limited by the rule of the court. On the 1st of March, a motion to set aside that order was made, when Mr. Hughes obtained time for one week to examine the transcript proposed to be filed, and it is within the recollection of the court that this was on the ground that it was an incomplete record. On the 8th of March he had an extension of time for this examination to the 22d, which made three weeks allowed for that purpose, and on that day the order of dismissal was set aside, and the case docketed on the transcript on which it was finally heard. The case was reached for argument at the October term, 1873, and continued without objection, and on the 15th of October, 1874, was passed until the 13th of November by consent, and heard on the 16th and 17th of that month.

These facts which are of record in this court, show that the sufficiency of the transcript on which the case was heard had been a matter of careful consideration by counsel for petitioners, and that it was finally accepted and filed, and that for two years and a half it remained on the docket, and no attempt to correct it by certiorari or otherwise was made. It cannot be said, in the face of these facts, even if the omitted parts of the record were material, that appellee was without fault in failing to have it brought up.

But we have no doubt that Mr. Hughes, who was an experienced
214 and careful lawyer, was satisfied, as we are, from an examination of this additional transcript, that it was wholly immaterial to any issue in the cause.

It consists of commissions to take depositions, orders fixing the time, by extension or otherwise, of taking testimony, of rules upon the parties to do various things preparatory to a final hearing, which do not affect the merits of the case. It is filled with matter showing Ambler to have been drunk, vicious, negligent, and in contempt of the court in the progress of the case. In short, if his case was to be tried on its merits, instead of the merits of his case, it shows enough, as the original record did, to defeat it.

All this is only in aid of the theory on which Whipple has rested his case and lost it, namely, that because Ambler was a very bad man, a drunkard, and a convicted felon, that he, his trustee and partner, could take to himself all the benefit of Ambler's skill and labor, disregard his double relation as trustee and partner, and violate every principle which governs these confidential relations.

The only error of fact pointed out in the opinion of the court, which is sustained by the record, is that Ambler, instead of leaving Washington about the 20th of August, the date of the successful experiment, did not leave until September the 1st—a difference wholly without influence on the points decided.

We remain of the opinion that the decree of this court was right, and the petition for rehearing is denied.

True copy. Test:

[SEAL.]

D. W. MIDDLETON,
Clerk Sup. Ct. U. S.

Second opinion Sup. Ct. U. S.

215 AMBLER'S EXHIBIT No. .

In the supreme court of the District of Columbia, in general term.

AUGUSTIN I. AMBLER
vs.
RODNEY M. WHIPPLE AND THOMAS S. DICKERSON. } No. 1783. In equity. Appeal.

And now, on this 2d day of February, A. D. 1875, came the appellant, by his solicitors, George W. Paschal and Rodney Mason, and filed and presented to the court here the mandate of the Supreme Court of the United States in words and figures following, to wit:

Mandate Sup. Court.

216 UNITED STATES OF AMERICA, *ss:*

SEAL OF SUPREME COURT. The President of the United States of America to the honorable the judges of the supreme court of the District of Columbia, greeting:

Whereas lately, in the supreme court of the District of Columbia, before you, or some of you, in a cause between Augustin I. Ambler, complainant, and Rodney M. Whipple and Thomas S. Dickerson, defendants (in original bill), and Rodney M. Whipple, complainant, and Augustin I. Ambler, defendant (in cross-bill), wherein the decree of the said supreme court, entered in said cause on the 2d day of December, A. D. 1871, is in the following words, viz: "This cause came on to be heard at this term upon the record of the special term, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged, and decided that the decree of the said special term be, and the same is, affirmed with costs, as by the inspection of the transcript of the record of the said circuit court, which was brought into the Sepreme Court of the United States by virtue of an appeal, agreeably to the acts of Congress in such cases made and provided, fully and at large appears; and

"Whereas in the present term of October, in the year of our Lord one thousand eight hundred and seventy-four, the said cause came on to be heard before the said Supreme Court on the said transcript of record, and was argued by counsel: On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, reversed, with costs, and that Ambler recover against the said Rodney M. Whipple and Thomas S. Dickerson five hundred and fifty-four dollars and twelve cents for his costs herein expended, and have execution thereof.

"And it is further ordered that this cause be, and the same is hereby, remanded to the said supreme court for further proceedings to be had therein in conformity with the opinion of this court.

"30th November, 1874."

You therefore are hereby commanded that such execution and
217 further proceedings be had in said cause, in conformity to the opinion and decree of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

In witness the honorable Morrison R. Waite, Chief Justice of said Supreme Court, the first day of February, in the year of our Lord one thousand eight hundred and seventy-five.

Costs of A. I. Ambler: Clerk, $534.12; attorney, $20—554.12. Taxed by D. W. Middleton, clerk of the Supreme Court of the U. S.

And thereupon, upon motion of the complainant's solicitors, it is here ordered, adjudged, and decreed that the aforesaid decree, rendered in this court on the 2d day of December, A. D. 1871, affirming the decree of the special term of this court, be reversed, annulled, and set aside. And it is further ordered, adjudged, and decreed that the said decree of the special term in equity, rendered on the 27th day of June, A. D. 1871, in so far as it dismissed the original bill of the complainant against Rodney M. Whipple and Thomas S. Dickerson be reversed, annulled, and set aside, and in lieu of said decree in the original cause it is ordered, adjudged, and decreed that the said Rodney M. Whipple and Thomas S. Dickerson did receive, and do now hold in trust, for the benefit of the complainant, Augustin I. Ambler, one-half of the two patents issued to them and described in the pleadings as numbers 95665 and 102662, and all the rights, franchises, benefits, privileges, sales, and receipts arising therefrom or to arise therefrom.

And it is further ordered, adjudged, and decreed that an accounting be held as to the profits realized by the said defendants, or either of them, for the use or sale or otherwise arising from said patents, and that such further proceedings be had by this court as are in conformity to the opinion of the Supreme Court of the United States rendered in said cause.

It is further ordered, adjudged, and decreed that the complainant recover of the defendants all his costs in the Supreme Court of the United States in and about said appeal expended, taxed at $554.12, together with all his costs in and about the appeal in the general term, including the transcript of the record to the Supreme Court of the United States, and also the complainant's costs in the special term to be taxed and certified by the
218 clerk, and that if the whole of said costs be not paid to the clerk within thirty days hereafter, then execution be issued therefor against said defendants, and that such further proceedings may be had in relation thereto as is proper in equity causes.

By order of the court:

D. K. CARTER,
Chief Justice.

Test:

{ SEAL SUPREME COURT OF THE DISTRICT OF COLUMBIA. } R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

MEMORANDUM.—E. C. Engersoll, special auditor, has, by his report, awarded A. I. Ambler one-half of patents Nos. 95665 and 102662, and all the rights, franchises, benefits, privileges, sales, and receipts arising therefrom, or to arise therefrom, also the sum of $666,052.35, and to 1,375 shares of stock of the National Gas and Iron Company.

Test:

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

219 AMBLER'S EXHIBIT No. .

AMBLER
vs.
CHOUTEAU AND OTHERS. } 1054.

Abstract of pleadings.

The complainant, Ambler, in October, 1875, filed a bill in chancery against the Missouri Liquid Fuel and Illuminating Company, a corporation of the State of Missouri, and the other individual defendants, as officers and corporators thereof, rejecting a great deal of what has nothing to do with the case. The following is presented as exhibiting an abstract of the material averment of the original bill: It is averred that one Whipple and the complainant formed a partnership for 17 years, from July 13, 1869, for putting in use an invention for generating gas from petroleum by steam, "which copartnership still and now exists in full force and effect," as is averred in said bill.

Among other articles of said copartnership are the 3d, 4th, and 6th:

ARTICLE THIRD.—R. M. Whipple shall have the exclusive and
220 entire business management of the same, so as to include the introduction of said invention to the public use, and to secure, as far as possible, the adoption of the same, both in this country and in all other countries, and for which purposes, and all and singular the purposes incident thereto, the said R. M. Whipple shall have full and ample power and authority, and he is hereby granted by said Ambler full power and authority to act for him in the premises, to sign his name, and make his seal to any instrument, and all instruments of writing needful and necessary to carry out the objects and intention of this agreement as fully and entirely as the same may be done by the said Ambler if personally present at the doing thereof.

And the said A. I. Ambler hereby ratifies and confirms, all and singular, whatsoever may be legally and lawfully done in and about the premises.

ARTICLE FOURTH.—The said Whipple shall keep suitable books and accounts of all transactions done, and render quarterly accounts thereof, commencing on the first day of October, 1869, and said books and ac-
221 counts shall at all times be open to the examination and inspection of either party to this agreement.

ARTICLE SIXTH.—That any and all letters-patent that may be obtained in this country and all other countries by virtue of said invention, or by reason of any improvement on or modification of the same by either party, shall be owned by and between the parties to this agreement in equal shares, to wit, one undivided half to each; and all proceeds of sale or sales, of any and every kind and character, shall be shared by and between the parties hereto, share and share alike, and on following day the complainant made and delivered to said Whipple an assignment (referring therein to the articles of partnership between them) whereby, after reciting that it is desirable that "Whipple should have the full, absolute, complete, and exclusive authority to sell and convey the same, or any part thereof," Ambler sells and conveys to Whipple "my entire right, title, and interest in and to said inventions and the letters-patents that may be granted thereof, together

with all and singular the improvements I may make thereon and
222 modifications thereof."

Ambler then goes on to state the issuing of the first patent No. 92687; that Whipple and Dickerson conspired together to deprive Ambler of the benefit of his inventions and improvement, obtained letters-patent to be issued on October 12, 1869, to Dickerson and Whipple, No. 95665; that on the application of Whipple and Dickerson on the 15th April, 1870, another patent was issued to said Dickerson and Whipple, No. 102662, with the like fraudulent intent on the part of Whipple and Dickerson.

Ambler brought suit in the supreme court of the District of Columbia against Whipple and Dickerson, and obtained a decision upon appeal in said cause in the Supreme Court of the United States in favor of Ambler, which decision Ambler set o' in extenso as part of his bill.

Ambler, in his bill, states the object of his original bill against Whipple and Dickerson was to recover from them his share of the "large sum of money and proceeds received by them, their associates, colleagues, and confederates, and of your orator's rights and equities in the fraudulent and
223 unlawful sales of said inventions, * * * described in patents 92687, 95665, and 102662."

He stated that as being the first inventor in 1872, letters patent had been issued to him, Ambler, for the same inventions as described in Nos. 95665 and 102662; that pendente lite large sales had been made by Whipple & Dickerson of interest in said inventions; that in April, 1870, Dickerson and Whipple sold and transferred for $35,000 to Blunt and Insley, for the State of Missouri, the benefit of the patent No. 95665, and on December 23, 1871, they sold to Blunt and Insley for $35,000, for the same territory, the use of patent No. 102662, and on the same day the said Whipple and Dickerson, for the consideration of five dollars, assigned to the corporation, The Missouri Liquid Fuel and Illuminating Company, the patents above for said State of Missouri, and all improvements and modifications thereof, the said Blunt and Insley having transferred their right and interest to that corporation.

That during the sales to Blunt and Insley and the corporation, defendants had "full knowledge of decision in Ambler's favor in the Pat-
224 ent Office" of the trust and timely notice of the equitable rights of your orator therein.

Ambler then goes on to set out that the corporation, by virtue of all this, holds one-half of these inventions in trust for the benefit of complainant, and sets out that after the decision of the Supreme Court of the United States, the reversal of the decree in Ambler's original suit in the supreme court of the District of Columbia, and entering up a decree in favor of Ambler, that Whipple and Dickerson receive and hold in trust for Ambler one-half of the two patents, 95665 and 102662, and all rights, franchises, benefit, privileges, sales, and receipts arising thereof, and ordering an accounting for all profits realized by Whipple and Dickerson, or either of them, for the use and sale, or otherwise arising from said patents, etc.

The judgment is set out in full in 32d paragraph original bill, and contains a memorandum and certificate of the clerk of that court, certifying that an accounting had already taken place under that judgment, by which Ambler had been awarded one-half of patent No. 95665 and 102662,

225 with rights, etc., belonging thereto, and some shares of a corporation and a judgment against Whipple and Dickerson for $666,052.35, the avails of these sales. (See page 56, printed record.)

Ambler charges upon the defendants knowledge of his equities in the following language:

36. And hereupon your orator charges upon these defendants and each and every of them full knowledge and lawful and timely notice—

1st. Of the memorandum of agreement between Whipple and Ambler of May 24, 1869, aforesaid.

2d. Of the assignment in trust from Augustine I. Ambler, to Roney M. Whipple, May 25th, 1869, aforesaid.

3d. Of the issue of letters patent No. 92662 to Rodney M. Whipple and Augustine I. I. Ambler, July 13th, 1879, aforesaid.

4th. Of the issue of letters patent No. 95665, issued to Thomas S. Dickerson and Rodney M. Whipple, as the assignees of Thos. S. Dickerson, October 12th, 1869, and the subsequent issue of letters patent No. 102662 to Thomas S. Dickerson and Rodney M. Whipple as joint inventors, May 3d, 1870, aforesaid.

226 5th. That said patents 95665 and 102662 were set up as the title of Dickerson and Whipple, adversely to Augustin I. Ambler.

6th. Of the said suit No. 1783 in the supreme court of the District of Columbia aforesaid, and of its final decision in favor of Augustin I. Ambler in the Supreme Court of the United States, as aforesaid.

7th. Of the breach of the trust of Rodney M. Whipple, and his conspiracy, fraud, and collusion with Thomas S. Dickerson, in the pretended purchase by Whipple of Dickerson September 24th, 1869, as aforesaid, and by setting up the pretended title thus acquired against your orators and by other means of notice within the knowledge of these defendants.

8th. Of the three decisions of the Patent Office in the matter of interference of Augustin I. Ambler, against Thomas S. Dickerson, and Rodney M. Whipple; first, February 3d, 1872; second, May 9th, 1872; and third August 21st, 1872; and of the issue of letters patent No. 131240 thereon to Augustin I. Ambler, as the first, sole, and original inventor, September 10, 1872.

227 9th. Of the relations existing between James G. Blunt and Roney M. Phipple and of the relations of James G. Blunt and Merritt H. Insley.

10th. Of the letters and notices showing the relations of your orator with said Whipple and Dickerson, his rights and equities in the franchises of the suit then pending in the supreme court of the District of Columbia, and subsequently in the Supreme Court of the United States, and the interference in the Patent Office, as aforesaid.

11th. And of publications and circulars in relation to said trust and the franchises claimed by your orator therein, and of all the sales made, as shown by the public records of the Patent Office of the United States, as appears by the transcript of records aforesaid.

12th. And of the surrender of said letters patent Nos. 95665 and 102662, the application for reissues, and the issue of reissued letters patent Nos. 5326 and 5327, as aforesaid.

228 13th. The working and operation of the invention under letters patent Nos. 95665 and 102662, at the St. Louis fair of October,

1871, in fact, and as published in the St. Louis Times of October 3d, 4th, 5th, 6th, 7th, and 8th, 1871. It is not averred that the defendants have not paid to Whipple and Dickerson all that they were to pay them for the interest assigned. Whipple and Dickerson are not made parties to the bill; but the prayer of the bill seems to be that the defendant to this bill be decreed to be trustees for Ambler "by reason of the trust raised, created in Rodney M. Whipple by the memorandum of agreement of May 24th, 1869, and the assignment in trust of May 25, 1869, by your orator as aforesaid, and the fraudulent breach of trust by said Whipple "as to all the transactions between Ambler and Whipple and Dickerson, and that these defendants be decreed to pay to the complainant one-half of all sales anywhere made by Whipple and Dickerson of or in reference to these inventions, not only in relation to the sale made to the corporation, but in reference to all the sales and dealings of Whipple and Dickerson in all other States of the Union and abroad. This appears all
229 through the voluminous pray's; but appears particularly by the sixth prayer of the bill.

Separate demurrers were filed by the corporation by Blunt and Insley and by the other defendants.

The demurrers were sustained and thereupon Ambler filed, not an amended bill, but an amendment to the bill of complaint, in the following particulars: 1st, by asking to make Rodney M. Whipple, a citizen of the State of Illinois, a party. 2d, by taking out of the bill of complaint the sixth paragraph of it, wherein he sets the partnership, and substituting for it another paragraph, wherein he sets out the partnership substantially as before, and instead of "averring that said copartnership still and now exists," inserted the following, which copartnership was dissolved at the bringing of the suit January 4th, 1870, by your orator against said Whipple and Dickerson, and the same ceased to be operative, and existed thereafter as to third persons, and "remained in full force and effect" only as to the parties thereto, and the same could only be invoked thereafter by either of the parties to the agreement for the purposes of
230 settlement and account; and said partnership *partnership* was not, and could not be invoked thereafter by third parties who had no interest therein and were not entitled to an account therefrom previously to the bringing said suit of Ambler vs. Whipple and Dickerson, January 4th, 1870.

He further amended his bill by striking out the 7th paragraph in relation to the assignment by Ambler to Whipple of his half, and inserting in lieu of it the same averments, in the same language, except as to having the original in his possession. The amendment then proceeds:

5th. Your orator further amends the bill by striking out the second (2) paragraph of the prayer, and by substituting the first paragraph of this amended bill.

6. And further, your orator amends the original bill by striking out the ninth (9) paragraph of the prayer, and by substituting the second (2) paragraph of the prayer of this amended bill.

After proceeding to argue that it was not his intention in the original bill that the partnership of Whipple and Ambler as existing in fact,
231 the amendment proceeds:

8. And your orator hereupon expressly avers that said partner-

ship between Whipple and Ambler, except for the purposes aforesaid, was in law and fact dissolved by the acts and conduct of the parties thereto, at and before the bringing of this suit and exhibiting your orator's bill in this cause, and your orator had succeeded to all the rights of said partnership. That Whipple abandoned the partnership of Whipple and Ambler, and never returned to it, formed a new partnership with Dickerson, afterwards took in Blunt and Insley, and they and the other defendants formed, in December, 1871, this fraudulent corporation. That (11) the partnership of Whipple and Ambler, and the assignment to him by Ambler, ceased to exist at and before bringing of said suit by your orator of Ambler vs. Whipple and Dickerson, January 4, 1870, and said agreement remains in force and effect only and solely as a contract to show the scope and extent and to enforce the trust of

232 May 25th, 1869, and the rights and equities of your orator thereunder, and against any and all persons affected thereby or by reason thereof, and of all of which matters and things the defendants and each of them had due, timely, and lawful notice, and your orator avers that he has legally and lawfully succeeded to all the rights of said partnership, and by reason of which and the trust relations aforesaid your orator has a right to recover of Whipple and his associates in this scheme of fraud against your orator, and avers that everything of property and value was the sole and exclusive property of complainant.

The complainant goes on to show at great length that Whipple abandoned the partnership, made no sale in the name of Whipple and Ambler; gives the reason why Whipple was not made a party to this bill at great length; explains the nature of the partnership; that defendants "knew that they were dealing with the fraudulent trustee of Ambler," and that Whipple had no legal power or authority to deal with or sell the property or franchise covered with the trust; that the defendants hold the

233 property that has come into their hands not as partnership but as property charged with a trust for Ambler; gives a reason why Dickerson is not asked to become a party; asks various questions and submits various issues of your honors, and submits that to hold thus and so would be a dangerous precedent to establish in these days of fraud. Ambler then states the great number of sales all through the United States in 1870, '1, '2, '3, and stating that the extended litigation and its length and uncertainty, and the wealth and commercial character and influence of the defendants, have so depreciated the commercial value and character of the inventions that the complainant elects to receive his share of all sales made for value and all proceeds and profits "from defendants and each of them, as constructive trustees, trustees or otherwise, by implication or operation of law, and by reason of the premises as set forth in this case."

The amendment winds up with the following prayers:

234 First. The premises considered, your orator prays this honorable court that these defendants, and each and every of them, be declared by the decree of this honorable court constructive trustees, or trustees by implication and operation of law, of one-half of any and all proceeds, assets, and profits that arisen from the sale of the two patents Nos. 95665 and 102662, set for thin this cause, and that they did receive and do now hold the same in trust for the use and benefit of your orator; and that an accounting be had as to the proceeds, assets, and profits derived

from the use and sale, grant and right of said patents Nos. 95665 and 102662, or either of them, in the State of Missouri and elsewhere, for the use and benefit of your orator, and when the same shall be ascertained the amount and sum total be paid over to your orator, as his share of said sales, grants, privileges, and rights sold of said patents in Missouri and elsewhere.

Second. That these defendants, and each and every of them, did receive and do now hold as such trustees for the use and benefit of your orator
235 one-half of the full amount and sum of each and every sale made, whenever made, within the territory of United States, and the aggregate or sum total of the same of said patents Nos. 95665 and 102662, and of the reissues, Nos. 5326 and 5327, granted thereon, by Rodney M. Whipple, his assignees, colleagues, or confederates, and one-half of any and all sums of money, property, proceeds, assets, bonds, or stocks of every kind and character that have come to the hands of Whipple, his partners, assignees, colleagues, confederates, and coconspirators in and about the premises, by reason of the trust fully set forth in this cause, for and on account of the fraudulent breach of said trust, and of the fraudulent acquiescence, aid, assistance, and co-oporation of the defendants to the original bill therein, as fully and entirely as the same was acquired by said Whipple and his associates in the fraud.

Third. Your orator prays, the premises considered, therefore, that the partnership between Whipple and Ambler created by them May
236 24th, 1869, be dissolved upon such terms and equities as may to this honorable court seem just and right.

Then follows the prayer that a subpœna issue to R. M. Whipple to appear and answer.

BRIEF.

1. During all the time of the pendency of the suit of Ambler against Whipple and Dickerson, in the supreme court of the District of Columbia, down to the final decree in favor of Ambler, rendered on the 2d of February, 1875, the defendant corporation and its stockholders had full right to purchase the interest in the two patents as fully as Whipple and Dickerson owned the entire interest therein, or as if Ambler had no legal or equitable interest therein.

Ambler, when he found he had formed a partnership with Whipple, and by his assignment, the next day, conveyed for the purposes of sale all his interest in the invention, together with all modifications and improvements, which he thereafter made thereon, that Whipple was making an effort to cheat and defraud him, had two courses open to him. He could
237 have at once dissolved the partnership and filed his bill against Whipple to set aside the assignment, and settle up the partnership matters, and have filed his bill against Whipple and Dickerson, to have his rights in the new patents issued to Whipple and Dickerson established; or, he could avail himself of the advantages of the connection, allow Whipple and Dickerson to go on under the partnership and assignment and make sales either in the name of the partnership or their own, and insist that all those sales, when made, were made for him, and they must account to him for the profits of all the sales made by them for him from

the beginning. He might have repudiated the whole matter, and sought restitution of his original rights; or he could call upon them to account to him for all the patents that they had fraudulently obtained from him, to acknowledge his interest therein as belonging to the partnership of Whipple and Ambler, and to account to him for his original share of every sale that was made, whether by Whipple or Whipple and Dickerson. But he must
238 elect which he would do. He did elect, and he elected to consider their partnerships and arrangement still existing, and to hold Whipple and Dickerson (as the confederate of Whipple) to account to him for his share. Ambler, in his bill, states that to be the object of that suit; and the decision of the Supreme Court of the United States, and the final judgement in the supreme court of the District of Columbia, which he made a part of his bill, all show that to be the scope and object of that bill and the effect of the final decree therein. At the time that the defendants were induced to purchase an interest in his invention, if the original bill of Ambler vs. Whipple and Dickerson had been spread before these defendants, they would have seen that Ambler sought to enforce against Whipple and Dickerson his right to a share of these patents, under the original agreement between Ambler and Whipple, and for an account from them for what they had and might, during the pendency
239 of that suit, realize from the sale of interest thereunder. It was greatly to the interest of Ambler so to do, for the title to the two patents, Nos. 95665 and 102662, was in Whipple and Dickerson, and he was most desirous to have his interest therein secured to him and to share in the proceeds of the sales to as full an extent, and to stand in all respects, as if his rights, as they stood at the time of the partnership and assignment, had been acknowledged from the beginning. That this was the whole scope and object of the bill is shown, not only from the decision of the Supreme Court of the United States and the final decree in the original suit, as exhibited in the bill, but it appears from the averments of this bill that it was so considered by Ambler himself, when he says in the sixth paragraph, without qualification, "which copartnership still and now exists in full force and effect," not in a modified form, not for certain purposes, but for everything and for all purposes.

With this state of facts existing, why is it that these defendants
240 have not a right to deal with Whipple and Dickerson as acting for Ambler as well as them—that whatever might be the issue of that litigation—whatever Ambler might succeed in showing that he had an interest in the subject-matter of the suit or not, as the suit was to determine whether Ambler under the contracts between himself and Whipple, had any interest in property and its avails, these defendants under certain contracts made between Ambler and Whipple for its sale, could safely contract with Whipple and Dickerson.

If these patents belonged to Whipple and Dickerson, and Ambler had no interest in them, then they could safely contract. If on the other hand they were included in the partnership agreement of Whipple and Ambler, and therefore Ambler had an interest in them, then under the partnership agreement, and under Ambler's assignment to Whipple of the 25th May, 1869, Whipple was fully authorized to sell and convey. These patents were issued by the United States to Whipple and Dickerson, and
241 Ambler appeared to have no interest in the*rein*. If they purchased,

and any one had a better right to the patents than Whipple and Dickerson, these defendants might be sued for an infringement, but, how Ambler, after he had conveyed all his legal title to Whipple, and claimed to take as he finally took, title to his interest through them, could make *make* them liable for purchasing from Whipple and Dickerson, it is not wonderful they did not perceive.

II. Unless Ambler can aver and show that prior to the 23d December, 1871, both that the partnership between himself and Whipple had been dissolved, and that the assignment made by him of his interest in these inventions to Whipple had been annulled and the interest transferred to himself, no such *such* action as this against these defendants can be maintained.

What was the effect of these two instruments while they existed?

In the first place, without reference to the assignment, what is the
242 effect of the partnership agreement? By the 3d article Ambler gave to Whipple the right to sell or dispose of all the patents and inventions and improvements that he had made, or might make anywhere, at any time, to any person and on any terms that Whipple might
* * * Jesuitical. choose, and to sign, seal, and deliver for Ambler all instruments necessary for the purpose, Whipple to receive and to account to him for one-half of the proceeds. But Ambler did more than this. In order that Whipple might more perfectly and completely control all rights, and sell and dispose of all property and interest in these inventions and all future modifications and improvements thereof at his pleasure, he made an assignment of all his interest in them to Whipple on the next day after signing the articles of partnership, so that after the delivery of these two papers by Ambler Whipple had full power to sell and dispose of these inventions, and any and all interest therein. As far as third persons were concerned his power was absolute in these inventions, and it made no difference as far as Ambler's rights were concerned (as to his power
243 of dealing with third persons) whether the patent was in Ambler's name, or Whipple and Ambler's, or Whipple's, or Whipple and Deckerson's, or in the name of some other person. Now, we contend that the effect of the articles of copartnership and the effect of the deed of May 25, 1869, is that Whipple could sell and pass title free of all claims of Ambler, and that no trust did or could attach on the property sold, but did attach only upon the proceeds in the hands of Whipple. The plaintiff assented to the sale of the rights by Whipple, and assented to the passing of title to Whipple's vendee's, and therefore the rights of Ambler to the property when sold were extinguished. Ambler was willing to extinguish his rights in the property for the share of the proceeds which he had confidence in Whipple to believe he would pay him. It is a fixed principle that any cestui qui trust, compos mentis and sui juris, may alien his equitable interest, may sell it himself, or direct his trustee to sell it, and in such case the trust is extinguished as against the vendee. Here Ambler did both. He sold himself to Whipple in order that Whipple should sell free of his title, and he authorized Whipple to
244 sell by the articles of copartnership, and made valid the sales in advance, made valid all sales that Whipple should make. Of what value are the suggestions of this bill, that these sales were breaches of trust? The papers show that they were in direct performance of the trust. What was the trust? Simply this: Whipple to take and hold Ambler's

bill, sell when, where, to whom, and as he pleased, and be responsible to Ambler for his share of the proceeds. There was, then, no breach of trust in Whipple's selling, or in Blunt and Insley buying, or in their paying the purchase-money to Whipple, nor in Whipple receiving the purchase-money. If, after Whipple has received the property, he had refused to sell, that would have been a breach of trust. As it is, the only breach of trust that could be made is this: That Whipple did not pay over to Ambler the trust money received from sales made at Ambler's request and by his authority, and in discharge of the duty he owed to Ambler. The plaintiff is impressed by this palpable view of the case, and hence the large part of the bill taken up with allegations of insolvency of Whipple.

245 Hence, also, those allegations of the bill to the effect that defendants ought to have done something to protect plaintiff against Whipple's bad faith. Suppose Whipple was a man of bad character, insolvent, worthless in every way; suppose the plaintiff put all these patents into his hands, authorized him to sell them, to pass the title away, make deeds, receive the purchase-money, settle the account, and pay one-half the net proceeds to him. Suppose, after he was informed of Whipple's bad character, that he sued him, asking not to set aside the sales he had made, but to compel him to pay over one-half the proceeds, and to account for the property he acquired by virtue of the partnership. Suppose he still kept Whipple before the world as his partner, confidential agent, and trustee, telling the world Whipple could represent him, could sell and convey the property and receive the money from him, what right could he have to complain of such acts of Whipple?

III. The bill with its amendment, however you may treat that,

246 presents no equity. According to the averments of the bill the assignments as made to the defendants, was of the patents Nos. 95665 and 102662. These patents were patents issued by the United States to Whipple and Dickerson, and the title to those patents stood in Whipple and Dickerson absolutely and entirely until the 2d day of December, [error] 1875, when the supreme court of the District of Columbia decreed "that Rodney M. Whipple and Thomas S. Dickerson did receive, and do now hold in trust for the benefit of the complainant, Augustus [error] I. Ambler, one-half of the two patents, &c.

The legal title is still at this hour in Whipple and Dickerson, to these patents, but they hold one-half of them for the benefit of Ambler. As far as we can see, there is nothing at this hour why Whipple and Dickerson could not deal with these patents and sell interests therein, and if Ambler considered that there was the slightest value in these patents, he never would have allowed his interest in these patents to remain in this position.

The decree does not undertake to say that he owned one-half

247 of these patents (as, according to Ambler's theory, it ought to have done not only as to the half but to the whole of these patents), but distinctly places by that decree the title of the half to which Ambler has an equitable right in Whipple and Dickerson. That is the only right in these patents that Ambler has, and he takes it then and there by that decree and to that extent, and no further. What is there in that condition of things that invalidates any sale (except a fictitious and collusive one) made by Whipple and Dickerson during the pendency of that suit? It not only holds that Whipple and Dickerson was the agent

and trustee of Ambler to the extent of one-half of the patent, but it leaves the legal title to that half still in them.

But even if Ambler had a right to both patents which had been wrongfully granted to Whipple and *Ambler, without a shadow of right, and they had sold an interest to defendants, then this action could not be maintained. The titles to inventions are bestowed by the United States and remain where the United States have placed them, except when changed by a decree of a court, or
248 conveyance of the parties. Until that time comes the title remains where the United States has placed it, and any one can contract with such persons. Such purchasers are liable, if they contract, to find that the patents have been annulled and granted to some other person as being the true owner and first inventor, and if they use the invention they are liable to be sued for infringement. But it would be a wrongful result if the filing of a bill by a claimant against a patentee in any State of the Union claiming to own that patent would have the result to prevent the sale or use of that invention in all the States while that bill was pending, unless with the result of turning you into a trustee against your will and making you own the invention whether you desire to or not, and compelling you to pay to the claimant for the use of the invention the whole which you have already paid the original patentee. That would be better than any injunction. All that a claimant has to do was to file a bill and the patentee cannot do anything with his invention, for under this new doctrine
249 of pendente lite if any one shall buy any interest in the invention in any State of the Union there is a bill pending claiming to own his invention, he is liable to be called on to pay over again to the claimant if he shall years after establish his title though the invention (as these are) is absolutely worthless and all he originally paid has been thrown away. The force and effect of the bill of Ambler vs. Whipple and Dickerson, and of the decree thereunder, and its acceptance by Ambler, is to validate all the sales of those patents by Whipple and Dickerson as good and valid sales.

Ambler, in bringing his suit against Whipple and Dickerson, must decide whether he would treat these transfers as sales or not as sales. He elected to treat them as sales. We say that he could not do anything else. But however that may be he did elect to treat them as sales and he demanded an accounting from Whipple and Dickerson as sales, and he got it, as he shows by his bill. The effect of that is as if both had
250 united in making the sale and he looks to his accounting for his recompense.

And that is his position as to the sales now, as a moment's examination will show. The circuit court in its decision say that the original bill was defective, in that it was difficult to decide whether Ambler wants his patents back and the sale cancelled, or wants to confirm the sale and get the proceeds, but the court told him that he could not do both. Ambler in his amendment has tried to make this plain. He will have none of the patents; they have been reissued "by the great wealth, commercial character, and influence of the defendants;" and he insists that the sales are good and valid sales, but he declines to accept the result which the court say necessarily follows, to wit, that they are good for all purposes, and that he cannot recover the purchase-money over again, or any part of

*(In pencil, on margin:) Manifestly an error or misprint.

it, under any idea that the defendants are obliged to see that Whipple does not cheat him out of his share.

251 IV. The bill shows that Ambler has asked for and obtained an accounting from Whipple and Dickerson, and judgement against them for the very sale which he is now asking compensation from these defendants for. There can be no question as to the original bill of Ambler against Whipple and Dickerson. What it was and what was its scope and object the Supreme Court of the United States decided, and that decision forms part of complainant's bill. That decision was carried out in the decree rendered by the supreme court of the District, which forms part of the bill, and that decree, after finding that Whipple and Dickerson did receive, and do now hold, one-half of the two patents with all sales, profits, and avails, in trust for the benefit of Ambler, proceeds to order an accounting of the profits realized by them from such sales and otherwise, and upon such accounting finds that Ambler is entitled to receive from Whipple and Dickerson $666,052.35 for his share of the profits of such sales. Now, there is no averment that these sales to the Missouri Liquid Fuel and Illuminating Company,

252 and to Blunt and Insley, did not form a part of this accounting. By the letter of the decree these very sales were to form a part of the accounting, and when an accounting is had, and an amount of $666,052.35 is found to be due by them to Ambler, it is assumed that these sales are included in that accounting, and that he has judgement against his agent and trustee for his interest in the sales thus made. If it did not, Ambler is called upon so to allege at any rate. These sales are included, as the accounting is down to the time of the decree, the 2d January, 1875. It may very well be contended that he is concluded by the decree itself from disputing that the accounting does not include these sales.

V. There is no fraud shown on the part of the defendants, or any of them, as the bill now stands or ever stood. All that is found is a general charge of fraud, but what it consists in, according to the view of the complainant, is solely and only in undertaking to purchase from his

253 own agent and trustee an interest in the property which he gave full power and authority in that agent and trustee to sell and convey, whose sales he recognized and asked to have an account of, and which he now affirms. There are charges of fraud on every page in general; but when you ask in what they consist you cannot find any fraud unless the sales which he affirms are a fraud.

According to this bill, Whipple, his partner, commenced to defraud him almost from the beginning, and before any sales had been made in relation to the partnership property. But the only fraud against the original defendants that he sets up consists in the defendants undertaking to make any contract with Whipple about this property. It is because all contracts made with Whipple are fraudulent, not on account of any characteristics of this sale, and this is the only fraud charged, as will be seen by reference to these charges, which are all of one character, as per example:

254 On page 27:

"That said sales were all fraudulent sales made in the name of Thomas S. Dickerson and Rodney M. Whipple, and by the fraudulent

firm of Whipple and Dickerson, instead of the true and bona fide firm of Whipple and Ambler, as Rodney M. Whipple was bound in law and fact to make said sales, and each and every sale so made was a fraudulent breach of the trust by said Whipple, aided and abetted by Thomas S. Dickerson, and in fraudulent and bold violation of said trust and your orator's rights and equitable title in the franchise and trust property which these wrong-doers had fraudulently seized and appropriated to their own use."

On page 41:

"Said Blunt and Insley purchased the same with a full knowledge of the trust and timely notice of the equitable rights and title of your orator therein, and of the breach of trust aforesaid by Whipple and Dickerson, the vendors to them, and without the knowledge or consent of your orator, and to your orator's damage and injury, and without providing any means whatever for the protection of your orator's share of the trust-property or the proceeds thereof, as they were by law bound and obligated to do, in accordance with equity and good conscience."

On page 44:

"And defendant, Missouri Liquid Fuel and Illuminating Company, made said purchase and paid said large sum of money with a full knowledge of the trust and of the fraud and breach of trust aforesaid, and with timely and lawful notice of your orator's legal rights and equitable title therein, without any effort whatever on the part of said company to protect your orator's share of the purchase-money, as they were bound in law, in equity, and good conscience to do."

255 And so on, with similar averments in paragraphs 26, 27, 29, 38, 44, and 45, from all of which it appears that Ambler is under the idea that the defendants and everybody else are committing a fraud upon him, if they have any dealings with Whipple in relation to inventions to which he originally conveyed all his interest to Whipple, and as to which, after years of litigation, the Supreme Court decided that Whipple (and Dickerson through him) owned an half absolutely, and the other half in trust for Ambler (the legal title all the time, up to that time, being in Whipple and Dickerson), unless they, in some manner, secured to Ambler the share in that purchase-money that the Supreme Court finally decreed of right belonged to Ambler; and, stranger still, the result is supposed to be to make these defendants liable not only in reference to the sale made to them, but as to all the other sales made by Whipple and Dickerson.

VI. The bill still remains multifarious as before, both in that Whipple and Dickerson are necessary parties to the bill and that it em-
256 braces matters in reference to which this corporation and its stockholders have no interest whatever.

Dickerson is a necessary party to the bill, for the patents were originally issued to him and Whipple, and in any event Dickerson owns one-half of Whipple's interest, and on that ground he is as much a necessary party as Whipple, still is trustee holding in trust one-half of these patents for the use of Ambler.

Besides, the complainant seems to suppose that because the defendants traded with Whipple and Dickerson for the use of said patents for the State of Missouri, that this fact makes them constructive trustees in relation to all the transactions of Whipple and Dickerson in relation to all the patents over the whole earth, and that he can call upon these defendants

to account to him in relation to all of these transactions. The circuit court of this District in deciding upon the former demurrers, tried to show the complainant the difficulty he was laboring under, but the objections which were then pointed out as fatal still remain.

257 VII. The attempted amendment in relation to the partnership of Whipple & Ambler does not show any dissolution of the firm of Whipple & Ambler, but leaves the bill in that particular in the same condition as was the original bill.

The facts still remain, and while they remain they show, not only that there had no dissolution taken place at the time that the sale of the interest for Missouri in the patents was made by Whipple and Dickerson to the defendants, but that no dissolution has yet taken place—at least none till this amendment was made. To maintain this suit, however, the dissolution must have been made prior to or at the commencement of this suit.

We find a partnership existing, and no sufficient allegation that it was dissolved, but certain facts are stated which, in the mind of the complainant, are supposed to have produced that result. When we come to examine these facts, we find that no such result has in law been pro-

258 duced by them. It is certain that none of the ordinary methods of terminating a partnership have been made use of. Ambler has never given Whipple any notice of its termination, which might terminate it. Ambler has not transferred all the property of the firm to Whipple, nor Whipple to Ambler, which would terminate it. It is not shown that the patents, the subject-matter of the partnership, have expired, or that the firm have parted with all the interest therein, which would terminate the partnership. It is not shown that Whipple is dead, which would terminate it. If Ambler, stating that it existed, had said only that it was dissolved, it might be contended that it was a sufficient averment. But he does not stand there, and his case well not let him stand there. The general facts stated in the original bill still stand, and only one averment, that "the copartnership still and now exists in full force," falls out of the bill. Besides the mention in the third prayer of the original bill (which *it* is still retained), asking that the defendants be restrained from "proceeding any further in dealings with said trust and partner-

259 ship property," there are numerous averments in the amendment which show that there has been no dissolution. In one place it is that the dissolution took place "at the beginning of the suit, January 4, 1870, by your orator against Whipple and Dickerson, and the same ceased to operate and exist thereafter as to third persons, and remained in full force and effect only as to the parties thereto" (page 107)—that is, the dissolution is supposed to be effected by the bringing of that suit, and was in full force and effect as to the parties, but not as to third persons. Again, at page 107 (paragraph 7½), Ambler says that it was not his intention in the original bill to charge the partnership as in full force and effect as to third persons, but as to them it was not so after the bringing of the above suit.

Again, on page 110 (paragraph 8), he says that "the partnership, except for the purposes aforesaid, was in law and fact dissolved by the acts and conduct of the parties thereto at and before the bringing of the suit."

Again, on the same page (paragraph 11), he says that as to co-

260 operation, joint endeavor, and unity of purpose to further the partnership of Whipple and Ambler, the partnership was dissolved and ceased to exist at and before the bringing of the suit of Ambler v. Whipple and Dickerson, but existed only as a contract after that; that is, because did not perform his obligations, and tried to cheat his partner, it was thereby dissolved. Again, he seems doubtful about whether he is correct as to his law and fact, and on page 112 (paragraph 13) he "submits to your honors that the bringing of said suit of Ambler vs. Whipple and Dickerson operated as a dissolution of the firm of Whipple and Ambler as to third person with notice," &c.

Then in paragraphs 14, 15, 17, and 18, Ambler goes on to state the violation of the partnership by Whipple, and certain actings and doings in fraud of Ambler's right, and then "submits to your honors that Whipple can assert, set up, and maintain no right in law or equity under said partnership of Whipple and Ambler, or as partners therein."

261 The remainder of the amendment except the prayer, is an argument by Ambler that the fraudulent conduct of Whipple worked a dissolution of the partnership, but when the partnership was dissolved we are not told, but we are told that it is only partially dissolved. It is dissolved as to third persons, but exists in full force as to Ambler. According to Ambler it is very efficient to give him the benefit of one-half of the patents, but he does not allow Whipple and Dickerson to have any rights over property in which the supreme court of Columbia, for the first time, gave him an interest by virtue of the partnership, by decreeing that they have held, and do now hold, one-half of those patents in trust for Ambler from the issue of those patents. The sort of partnership which is not dissolved as to partners, but is as to third persons, which is dissolved for one purpose, but perfectly good for another, which is supposed to be dissolved by the mere fact of the fraudulent practices of one of the partners, which, if dissolved, no man can tell when or how, which one of its part-

262 ners, and the complainant in this suit was since its commencement sure, "still and now exists in full force," will have to live on till some more efficient means is found to dissolve it.

VIII. But even if a dissolution of partnership was shown, that is not enough, for the assignment of the interest of Ambler in the patents and all improvements still stands, and until that is annulled no such action as this can be maintained.

There remains upon the records of the Patent Office the assignment of Ambler to Whipple of the 25th of May, 1869. Ambler assigns to Whipple all his right, title, and interest in these inventions, and the improvements thereon and the modifications thereof, to the full term for which patents may be granted. Now, while this stands without retransfer or legal annullment, it is a full authority to Whipple to make this sale to these defendants.

This instrument don't disappear by fraudulent conduct of Whip-

263 ple, as the partnership is supposed to have done. If Ambler makes contracts that absolutely convey to another not only an absolute right of disposition, but the whole legal title to an interest in property which he owns, he must be supposed to know the legal effects of his acts, and to do it with his eyes open. That assignment still remained in its full force, at least until the decree of the supreme court of the District of Co-

lumbia, of the 2d January, 1875. It is sufficient for our purpose if it was in full force on the 23d of Dec., 1871.

IX. Whipple, as has been decided by the circuit court, is a necessary party to the determination of this suit; but Whipple is a citizen of Illinois, as is averred in the amendment, and under the Constitution and laws of the United States cannot be compelled to come in and make himself a party to this suit.

Ambler might find it very convenient to make Whipple come to the State of Missouri, and litigate any unsettled matters arising between
264 them since the decree and accounting in the former suit between them. But the law does not require Mr. Whipple to submit himself to the jurisdiction of the circuit court of the eastern district of Missouri.

Under the provisions of the Revised Statutes of the United States, p. 139, sec. 738, supplemented by the provisions of the 8th sec. of the act of 3d March, 1875, Whipple, a citizen of Illinois, could be brought into this suit if the suit had been of the character designated, to wit: That of a claim by the complainant to enforce a legal or equitable lien against real or personal property within the jurisdiction of the court. This case is not one of lien. Prior to the enacting of that statute, the law authorized the court to proceed to judgement in the absence of defendants not citizens, who do not come in and were not served, where those defendants were not necessary parties. If therefore, Whipple is only a formal party, or only a party whose presence is not necessary to the adjudication of the cause, the cause may proceed without his presence.

But this court has decided that Whipple is a necessary party, and
265 that he must be present, and since there is no way in which his presence can be enforced, under the law, the consequence is that this suit must be dismissed.

This question was before the Supreme Court of the United States in the case of Barney v. Baltimore City, 6 Wall., 286–7, and it was then decided in a case like the present, where the defendant was a necessary party, and the party cannot be subject to its jurisdiction, that the bill must be dismissed.

In the case of Hogan v. Walker et al., 14 How. (U. S.), 36, the court held in a similar case that the complainant can have no relief, and it was upon the distinction that the defect operated to defeat the action rather than operated upon the jurisdiction, that there was the dissent in the case of Barney v. Baltimore. (Supra.)

266 In the circuit court of the United States for the eastern district of Missouri.

AUGUSTIN J. AMBLER
vs.
CHARLES P. CHOUTEAU AND OTHERS.

Before Mr. Justice Miller on demurrer.

Abstract of the bill.

This is a bill brought by Ambler against a large number of defendants

who are alleged to be citizens of Missouri, and three others who are alleged to be citizens of other States, all of whom are stated to be stockholders of an incorporated company, called the Missouri Liquid Fuel and Illuminating Company, incorporated under the laws of the State of Missouri on the 19th day of December, 1871.

In the 2d paragraph of the bill it is alleged that he is the joint owner with R. M. Whipple of patent No. 92287, granted to Whittle and Ambler, and the owner of one-half of patents 95665 and 102662, granted to Whipple and Dickerson, but one of which received and held by Whipple and Dickerson as trustees in trust for Ambler, and that Ambler is owner of certain rights, franchises, benefits, sales, and receipts arising
267 from the same, as determined by the Supreme Court of the United States.

In the 3d paragraph he alleges that his "retrospective" interest in all this is of the value of over $4,000,000, for which each or any one of defendants are legally bound. That in the 4th paragraph alleges that certain trusts have been created, by which Whipple and Dickerson are made trustees for him to the extent of one-half of the patents and profits arising therefrom, for the two patents issued to them.

In the 5th and 6th paragraphs he alleges a fraudulent breach of trust by Whipple, and Whipple and Dickerson, and undertakes to state what "the foundation and gravamen of this bill is," viz, that it is the franchise, the trust, the breach of trust, the collusion, conspiracy, and "fraud between the defendants and said Whipple and Dickerson as the trustees of your orator, the rights and remedies of your orator against these defendants, and the prayer for relief."

After having called the pleading a bill of complaint, in the 7th paragraph, Ambler goes on to say "that this case is an action on the case in the nature of a conspiracy, founded on the fraudulent intention and specific acts of the defendants to cheat, swindle, and defraud your orator of his franchise and his rights in the patent and trust property aforesaid."

In the 8th paragraph Ambler goes on to state at great length the conspiracy of Whipple and Dickerson, which, in brief as there stated, was to appropriate said patents and all benefits thereof or therein to their own use, and to ignore all rights of Ambler therein; and that while a suit brought by Ambler in the supreme court of the District of Columbia was pending, defendants Blunt and Insley, in April, 1870, conspired with Whipple and Dickerson, and thereafter, in pursuit and furtherance of the same scheme of fraud and conspiracy, organized large stock companies, of which a list is given, including the Missouri Liquid and Illuminating Company.

268 In the 9th paragraph it is stated all these corporations "were incorporated and organized by the defendants, or some of them, and other conspirators unknown to your orator, acting with Whipple and Dickerson, Blunt and Insley, and other defendants in this bill * * * in furtherance of the plans, agreement, and conspiracy aforesaid," and that defendants, and each of them, with intent to cheat and defraud Ambler, did unite, collude, and conspire with Whipple and Dickerson to injure and defraud Ambler of his rights in the patent and trust property, with full knowledge of all the facts.

In the 10th paragraph Ambler, at great length, goes on to state that

there are other and distinct causes of action against the defendants which he has, and sets out in detail four of them, and then says that none of these are included in this action, and goes on to state what this action is in the following words: "Your orator insists that this cause of action contains, and is intended to contain, but one cause of action, and that is an action on the case in the nature of a conspiracy formed, and for the purposes aforesaid, with the intention of cheating, swindling, and defrauding your orator of his rights in the property aforesaid, and of the proceeds, assets, and profits arising and to arise therefrom, and for and on account of which your orator prays relief in damages, under the rule of law in such case, to the full extent of the wrong and injury done."

In the 11th, 12th, 13th, 14th, 15th, 16th, and 17th paragraphs, Ambler goes on to set out the history of the patent to Whipple, to Ambler; the partnership of Whipple and Ambler; the assignment by Ambler of his half of the patent to Whipple; of the alleged fraudulent application for patent by Dickerson, and the issue of the patents 95665 and 102662 to Whipple and Dickerson.

In the 18th and 19th paragraphs, Ambler sets out the bringing of his suit against Whipple and Dickerson, on the 4th of January, 1870,
269 in the supreme court of the District of Columbia, and the proceedings there and in the Supreme Court of the United States, and the decision and judgment in said United States Supreme Court in 1874, which he states was, "that said Rodney M. Whipple and Thomas S. Dickerson did receive, and do now hold in trust for the benefit of the complainant, Augustus J. Ambler, one-half of the two patents issued to said Whipple and Dickerson, and described in the pleadings as Nos. 95665 and 102662, and all the rights, franchises, benefits, privileges, sales, and receipts arising and to arise therefrom."

In the 20th paragraph of said bill, Ambler states that upon these patents large sales were made pendente lite, and were all fraudulent sales made by Whipple and Dickerson, and their confederates, Blunt and Insley, in pursuance of the scheme of fraud and conspiracy, and was a fraudulent sale and bold violation of the trust, and that the defendants made their purchase from Whipple and Dickerson, and Blunt and Insley, with full knowledge and notice thereof, "without providing any means of protection of your orator's share of the purchase-money, or any part thereof, as they were in equity bound to do."

In the 21st, 22d, 23d, 24th, and 25th paragraphs, Ambler sets out his application for the issue of a patent to himself upon the same inventions described and patented to Whipple and Dickerson as 95665 and 102662, and the contests over that application, and the final decision of interference, and that priority of invention was held to be with Ambler in August, 1872, and that on September 10, 1872, patent 131240 was issued to your orator as the first, sole, and original inventor of the invention set forth and described in letters Nos. 95665 and 102662," and states that defendants had full knowledge and notice of these decisions.

In the 26th, 27th, and 28th paragraphs, Ambler goes on to set out that Whipple and Dickerson, on the 21st of April, 1870, sold the interest of the State of Missouri to Blunt and Insley, for $35,000, in patent 95665, and on the 23d of December, 1871, sold to the same persons the
270 interest for Missouri, in patent 102662, for $35,000, all of which

was done with notice of the rights of Ambler, and "without providing any means whatever for the protection of your orator's share of the trust property or the proceeds thereof," and that Whipple and Dickerson, on the 23d of December, 1871, agreed to convey to the Missouri Liquid Fuel and Illuminating Company, for $5, any and all improvements they might make on said patents; that at this time the "incorporators" of said corporation "had full knowledge of the trust and of the equitable title and legal rights of your orator," and that they made the contract "without providing any means of protection" of Ambler's share of the profits.

The 29th paragraph we give in full, as it presents what the complainant seems to reply on: "That on or about the 18th day of December, 1871, said defendants, Blunt and Insley, sold and conveyed to the Missouri Liquid Fuel and Illuminating Company the franchise and interest of your orator, with a full knowledge of the trust and of the fraud and breach of trust aforesaid, and with lawful and timely notice of your orator's equitable title and legal rights therein, and with lawful notice thereof, for the sum of $500,000, as your orator has been informed and believes, and the incorporators of the Missouri Liquid Fuel and Illuminating Company made said purchase, and paid said large sum of money, with a full knowledge of the trust and of the fraud and breach of the trust aforesaid, and with lawful and timely notice of your orator's legal rights and equitable title therein, without any effort whatsoever on the part of said directors of said company to protect your orator's share of the purchase-money as they were bound in law, in equity, and good conscience to do in this behalf, and without the knowledge and consent of your orator, and to your orator's damage and injury, and that said Blunt and Insley thereupon became members, stockholders, trustees, and directors in and of said company, becoming in fact both vendors and vendees of the franchise and trust property
271 aforesaid, in dealing with and becoming directors in said Missouri Liquid Fuel and Illuminating Company, as will appear by a copy of the articles of association filed herewith and prayed to be made a part thereof, marked Ambler Exhibit No. 17.

In the 30th, 31st, and 32d paragraphs, Ambler states the assignment of Blunt and Insley to the company and its recording, and that the company was incorporated for putting in use the invention mentioned in said patents granted to Whipple and Dickerson, one-half in trust for the benefit of Ambler.

In the 33d, 34th, and 35th paragraphs, Ambler states that Blunt and Insley first purchased the interest in the State of Missouri, of Whipple and Dickerson, about the 21st of April, 1870, and again on December 23d, 1871; and on the said last day Blunt and Insley sold to the said corporation, which corporation "had been previously incorporated to further and promote the fraud." That this assignment was made twenty-one days after the decision in the supreme court of the District of Columbia in favor of Whipple and Dickerson, all of which defendants knew, and that Ambler had appealed, and states that the corporation was incorporated with the intent to swindle and defraud your orator, and fraudulently formed to extend, enlarge, and promote the scheme of fraud and conspiracy by defendants herein; and that said company purchased the interest for the same fraudulent purpose pendente lite, and goes on to show that defendants be-

came corporators, "the incorporation being one of the acts included in the plan of the scheme of fraud and conspiracy aforesaid."

In the 36th, 37th, 38th, and 39th paragraphs, Ambler goes on to state how the corporation was formed, and to show that the stock was not fully paid by the corporators, and how the company paid Blunt and Insley—all of which can have nothing to do with this suit, but seem to be introduced as proofs of the conspiracy, but which, as stated by Ambler seems to be this, viz, that the capital of the corporation was $500,000; that, in consideration of the assignment of the interest in the patent, the
272 corporation paid Blunt and Insley $83,000, and stock to the amount of 4,117 shares, and that Blunt and Insley returned to the corporation $20,000 of the $83,000 received by them as a working capital, and gave back to the corporation 840 shares to sell and dispose of for the benefit of the corporation, and that they gave to each of the individual corporators the same number of shares as he had subscribed and paid for.

In the 40th, 41st, 42d, and 43d paragraphs, he charges the defendants with conspiring with Whipple and Dickerson against him by giving them their names, influence, and credit, and forming this corporation and getting the shares of stock, which corporation he says still exists.

In the 44th, 45th, 46th, and 47th paragraphs, Ambler goes on to charge that the corporation was organized and conducted in all its proceedings clandestinely and secretly, with the object and intent to swindle and defraud him and deceive the public—all this pending the suit of Ambler vs. Whipple and Dickerson; and that all the sales made of said property, or any part thereof, to Blunt and Insley by Whipple and Dickerson, or either of them, were made as and from one conspirator to another, and were all made with intent to swindle and defraud Ambler—all of which were well known to defendants; and they did become, in law and in fact, active participators and conspirators therein, and parties thereto, from its inception.

In the 48th, 49th, and 50th paragraphs, Ambler charges that "the defendants took no steps whatever, legal or otherwise, to recover said property, or to stay Whipple and Dickerson in the pursuit and furtherance of the fraud, in the waste of the proceeds of the trust, the sequestration of the assets in reckless speculation," &c.; and that they all form one connected scheme or fraud, part of which was the formation of this incorporation; and states, in paragraph 50, that the issue here is the same as in the former case of Ambler vs. Whipple and Dickerson as against Dickerson; and that defendants so connected themselves with Whipple, and Whipple and Dickerson, that they cannot resist Ambler's right to one-half the patents, and of the profits made or to be made out of them.

273 In the 51st paragraph, Ambler states that the commercial standing of Whipple and Dickerson was so poor, and that of the defendants so high, that more than ordinary caution was due from defendants in dealing with Whipple and Dickerson, and that it is unreasonable to suppose that they were not put upon proper notice of the title of the vendors and of the trust, and the fraudulent breach of it, and of Ambler's rights.

In the 52d and 53d paragraphs, Ambler states that the association and co-operation of defendants with Whipple and Dickerson gave them great influence and strength, and that they used these facts to make great sales; and that, with a full knowledge that Whipple and Dickerson were making great sales, the defendants did not attempt to stop them or protect the share of Ambler in the trust property.

The paragraphs 54 to 63 seem to be taken up with the attempt to argue that Whipple is not a necessary party to this bill, and states that Whipple did not act in the name of Whipple and Ambler, nor for their use or benefit, nor as agent for Ambler, but adverse to Ambler, and refers to the former suit which Ambler brought against the defendants and others, and dismissed, and to the falsity of the arguments of the defendants' counsel therein, which is filed as an exhibit to said bill.

In the 63d paragraph, Ambler states that Whipple and Dickerson fraudulently surrendered the patents 95665 and 102662, "and they were extinguished by law," and obtained fraudulent reissue of the same in March, 1873—Nos. 5326 and 5327.

In the 64th paragraph, Ambler sets out that the invention in said patents 95665 and 102662, has been used, made, and vended by defendants in the eastern district of Missouri; that it has been largely advertised by defendants, and set forth by them as a valuable invention, and large sales have been made by defendants, or some of them acting in co-operation with
Whipple and Dickerson, without the knowledge or consent of Am-
274 bler, and without in any way, on the part of these defendants, putting forth any effort whatever to save to your orator any part or portion of your orator's share therein, or in any way to protect the same for the use and benefit of your orator, or to recover any part thereof.

In the 65th paragraph Ambler goes on to state that from time to time he has notified the defendants, or some of them, and among them Chouteau, Allen, Filley, and Peck, by circular or letter, of his legal right and equitable title and interest in these patents, and of the pending suit, but does not state when he did so, but in the 74th paragraph states that he knew nothing about these sales until December, 1871.

In the 66th to 71st paragraphs, inclusive, Ambler goes on to show, at great length, large sales in all parts of the United States, by Whipple and Dickerson, including the sales for the State of Missouri to the Missouri Liquid Fuel and Illuminating Company, but in none of which it is alleged that these defendants had any interest whatever.

In the 72d paragraph Ambler charges that "Whipple and the parties associated with him have squandered and wasted the proceeds and assets derived from the trust property, by appropriating the same to his own use, and diverting the same from its legitimate purposes and uses not contemplated by the trust, in large, wild, and reckless speculations in land, railroad stocks, and other property of doubtful value, instead of sharing with your orator, as he was in duty bound to do, without let or hindrance on the part of these defendants." That the defendants have made no effort whatever to stop said Whipple from squandering and wasting the vast sums of money, stocks, and assets derived from the sales of said franchises that he has received, squandered, and wasted. That Whipple is now bankrupt, and that defendants became linked together with Whipple and Dickerson by their own acts, and have taken no legal steps to relieve themselves of the relations they bear to Whipple and Dickerson and to Ambler.

In the 73d paragraph Ambler states that the records show sales
275 made by Whipple and Dickerson to the amount of $7,591.067, all of which were a breach of trust and fraud against Ambler, and that defendants are charged with full knowledge and notice of them, and

are "liable and bound, in law and equity, to the payment and full discharge of your orator's share, and just rights and equities."

In the 74th paragraph Ambler charges that Martagh, who was proprietor of a newspaper in Washington City, and interested in the patent, and that he made publications of the arguments of Whipple and Dickerson's counsel, and the decree of the supreme court of Columbia in their favor, with a view of influencing public opinion against Ambler. That though the decision was reversed by the Supreme Court of the United States, yet the long litigation and these fraudulent conveyances have destroyed confidence in the invention, and have greatly retarded and hindered Ambler in his efforts for the introduction of said invention into public use. That most of the States and Territories have been sold to individuals and corporations, "merging the entire patent trust and partnership property and franchises of your orator into so many parts and subdivided parts as to necessitate a multiplicity of suits, whereby Ambler has sustained damage to the extent of over $4,000,000; and he states that he did not learn or know of the fraud, collusion, and confederation of these defendants with Whipple and Dickerson, in violation of the trust aforesaid, until subsequently to the purchase by Blunt and Insley aforesaid, and by other defendants of the State of Missouri, from James G. Blunt and Merritt H. Insley," and "until the month of December, or thereafter, 1871."

In the 76th, 77th, and 78th paragraphs Ambler states that he has, from time to time, notified these defendants of his legal rights, without saying when he did it, and goes on at great length to charge that the defendants had intercourse and fellowship with Whipple and Dickerson, and had full knowledge and notice of the trust, and fraudulent breach of trust, of Whipple and Dickerson, and that he has received no part of the large sales that have been made by Whipple and Dickerson, and that his share still remains due and unpaid, and that defendants were not purchasers without notice, etc.

276 In the 79th and 80th paragraphs, Ambler says that he can't trace all the fraudulent acts and unlawful doings of defendants in the scheme of fraud and conspiracy, but they all have conspired against him, and have been using the proceeds of the sales of these patents against him.

In the 81st paragraph Ambler, in detail, proceeds to charge in general terms upon the defendants, and each of them, full knowledge and due and timely notice of all the acts and transactions, and of each and every act and transaction, and then proceeds to enumerate them in detail from one to twenty, beginning at the partnership of Whipple and Ambler, and ending with the reissue of the two patents, including the suit of Ambler vs. Whipple and Dickerson, and all the proceedings therein.

The 82d paragraph we give in full, as it shows upon what the suit is based: "That these defendants, knowing the precarious and doubtful character of Rodney M. Whipple, have, without taking any steps to protect your orator, or to prevent it, stood by and looked on, while Rodney M. Whipple, the chief conspirator, was alienating and sequestrating the property which has come into his hands through the scheme of fraud and conspiracy aforesaid, and as growing out of partnership and trust aforesaid, and by fraudulently going into bankruptcy to relieve himself, as far as he could do so, pending said suit of Ambler vs. Whipple and Dicker-

son, by a fraudulent use of the bankruptcy law of the United States, and to defeat the execution of the judgment and decrees obtained by your orator against him in the suit of Ambler vs. Whipple and Dickerson aforesaid, and, by reason thereof, and of the premises herein fully and at large set forth, your orator prays the intervention of this court, and for damages as prayed for in the bill."

And in the 83d paragraph he states the full amount of all the sales at $8,000,000, and only claims the moderate sum of one-half thereof, or $4,000,000, with interest thereon from each transaction, and an additional sum of $500,000 for time, labor, trouble, and cost of litigation and the costs of the suit, and then follows the prayer that he may have
277 judgment against these defendants, severally and jointly, to the full extent of the damages set out in the last paragraph, with injunctions and accounts to be taken.

The defendants demur on the ground that complainant by his bill has not made any such case as entitled him to any discovery or any relief; that he shows by the bill that defendants made no contracts nor had anything to do with the subject-matter of the bill, and are stated in the bill to have no connection with it in any way, save as members of the corporation which made the contracts and did the acts complained of, and it is not shown by the bill that in any manner they are or can be in any way affected individually by the matters and things in the bill complained; that the complainant in his bill affirms the sale as made by Whipple and Whipple and Dickerson to the corporation, and at the same time claims to recover from defendants the consideration already paid by the corporation, and in a different manner contracted for; that the bill shows no equity, and presents no ground for equitable relief.

278 *Brief.*

The bill and the argument of complainant from the beginning to the end show unmistakably the ear-marks of being written by the complainant, and there is not a line in either that could have emanated from either of the gentlemen whose names appear as counsel in the case. If the bill showed anything out of which a bill in equity could have been constructed, it would have been our duty to have asked a reference to a master, to have had it purged from the mass of matter thrown in, seven-eighths of which is mere excrescence, having nothing to do with anything out of which a bill could be constructed, if one could be made.

We feel that we might safely have left the case with the court upon the bill and the argument of the complainant, but a proper respect for the court requires that we should assist the court in getting through this mass of undigested matter, by making an abstract of it, and by pointing out some of the fatal defects in what is called a bill in equity.

I. Though called a bill in equity it presents no case for any equitable relief, but on the contrary repeatedly says that it is an action on the case on the ground of fraudulent conspiracy to cheat the complainant out of his franchise and his rights in the patents named.

This is so stated in the 7th paragraph of the bill in so many words, and in the 10th paragraph the complainant says, "your orator insists that the cause of action contains, and is intended to contain, but one cause of ac-

tion, and that is, an action on the case in the nature of a conspiracy formed for the purposes aforesaid, with the intention of cheating, swindling,
279 and defrauding your orator of his rights in the property aforesaid," etc., and then, in the same paragraph, prays for "damages" on account of such conspiracy.

In his argument he affirms this, and says, in his 11th point, "that it is an action on the case in the nature of a conspiracy," and says, in the 14th point, that "we insist that defendants were liable for the insolvency or dishonesty of the confederates in the loss and waste of the assets and property affected by this conspiracy," and all through his argument insists that the gravamen of this suit is a fraudulent conspiracy to cheat him out of his rights.

And no doubt he is right about it. Upon the averments contained in the pleading, if there is any action in it anywhere, in any shape (which we utterly deny), it would necessarily be an action at law for damages for a fraudulent conspiracy by which complainant was injured.

II. Even if the defendants individually had done the acts complained of, this pleading (called hereafter, for convenience, a bill) shows no fraudulent conspiracy, and no conspiracy at all against the complainant and his rights.

Three persons have a controversy about the interest in one patent and the ownership in two others, and one of them files his bill against the two others to enforce the rights which he claims as against the others. During the pendency of this suit a sale was made (as we will assume for this purpose) to these defendants, by the two parties defendant in that suit, of an interest in those patents, the defendants believing that the two persons could convey a title to the interest conveyed. That might be a mistake, and the defendants, if they purchased, would necessarily run that risk. But it is altogether a new idea that because a man claims an interest in a patent, or the patent itself, and brings a suit in equity to enforce that right (being the only way in which he can do it), that he thereby prevents
280 the defendants in such suit from selling such interest as they have therein to any one who is willing to buy, until the final termination of the suit. The proposition is gravely laid down that any one who deals with these persons while that suit is pending subjects himself, in case the suit is successful, to be treated as a conspirator, and to be held liable in solido for all the money and profits that the two persons have made by sales over the whole Union during the litigation. The party bringing the suit gives no bond, places himself under no liability if his suit is unsuccessful, and yet it is supposed that because he has brought his suit he thereby prevents the persons whom he sues from selling any title they may have, or interest they may have, during the whole of this litigation. If the complainant should be finally proved to have no title in it, it might have produced utter ruin to those who held the true title by preventing any transfer of any portion of their interest during the litigation. It is a new principle that a person who purchases a thing, or any interest in a thing, makes himself responsible for anything except to pay what he contracted to pay for it, except in the case of negotiable securities where he has alienated them. If the title he buys fails he loses his money and his title to the thing purchased. It is no conspiracy to buy; it is no fraud to buy; it is no cheating to buy. If thing sold belongs to the vendor, or

he had power to sell it, the vendee gets what he purchased. If the vendor had no title or had no power to sell the thing sold, the vendee gets no title and loses his money. But that is the extent of the risk he runs in making the purchase, and it makes no difference whether at the time he makes the purchase there is a litigation about the thing purchased or not.

III. But this purchase, as the bill shows, was not made by these defendants, but by the corporation, regularly and legally incorporated, in which they happen to own stock, and some of them happen to have
281 been directors, and if any one is liable it alone can be. If buying an interest in a worthless patent, and paying a large sum of money for it, is a fraudulent conspiracy against any one, or a fraudulent invasion of anybody's rights, then these culpable acts were not done by any of these defendants, but by the corporation in which they owned stock. It seems to be supposed that because this corporation was formed with a view to the purchase of an interest in these patents, that this is proof of a fraudulent conspiracy and combination to injure the complainant. If the purposes for which a corporation is formed are unlawful, it has its effects upon the legality and corporate existence of the corporation; but if the object is such as the law recognizes as lawful, we do not suppose the parties who become corporators are responsible except to pay for their stock, and such other responsibility as in some instances the statute law may impose upon them. What was it, even according to this bill, that the persons who expected to be corporators did? No overt act' of conspiracy are stated, except they were bargaining for the purchase of this interest by the corporation when formed. If talking with a person as to a purchase to be made by another constitutes a man a confederate in a fraud, then possibly there may be some ground for the charge. The fact however remains, that all the purchasers, and every act complained of, affecting any interest in the patent, was the act of the corporation, and the corporation is in law alone responsible therefor.

IV. The complainant by his bill affirms the sale made to Blunt and Insley, and by them and Whipple and Dickerson to the Missouri Liquid Fuel and Illuminating Company, as very valid and legal, and as conveying to the said corporation all his interest in the patents for the territory named. If the persons selling were competent to sell they were competent to fix the consideration and to receive it, and the complainant cannot object to the consideration which his agents accepted for the sale, and must look to them for his share in the consideration agreed on.

282 All his acts show that he regards the patents as utterly worthless, and his sole cause of complaint is that he did not get a part of the spoils which they were enabled to obtain from the defendant and others. The complainant either feels that he cannot legally repudiate the sale of his interest in these patents, or that he don't wish to do it, and therefore the whole gravamen of his complaint, and the fraudulent conspiracy to cheat and defraud complainant out of his franchises and rights in these patents, resolves itself into this, as stated in the 20th, 26th, and 29th paragraphs and afterwards, to wit:

"That the said company made said purchase and paid said large sums of money with a full knowledge of the trust and of the fraud and breach of the trust aforesaid, and with lawful and timely notice of your orator's legal and equitable title therein, without any efforts on the part of said direct-

ors of said company to protect your orator's share of the purchase-money, as they were bound in law and equity and good conscience to do."

This is the whole fraud, the whole conspiracy, the whole scheme of cheating. If by that sale he was entitled to any portion of the consideration, he can, if not already legally paid, sue and recover from the corporation; but that there is any obligation upon the corporation, and much less upon the corporators, to constitute themselves the trustees of Ambler for the preservation of the rights which he was then litigating, is a patent absurdity. The sale as made to the company was either good or bad. If bad, Ambler has his interest still, and is not injured; if good, it is good just as it was made. It is not partly good and partly bad. What right had the company to constitute itself the trustees of Ambler? The agents of Ambler, who made the sale which he now ratifies, did not make it so. Whipple and Dickerson and Blunt and Insley did not make it so, and the law does not make it so. This whole idea is a figment in the brain of Ambler, and no such liability as he bases this supposed liability upon, attaches to the company, either by suit at law or bill in equity.

283 We do not stop here to show, as we once in a similar case between some of the same parties, had occasion to do, that Whipple had full authority from Ambler to make these sales to Blunt and Insley and to the company, because the complainant all along affirms these sales, invokes them and relies upon them as good and valid; insists in this suit against Whipple and Dickerson that his agreement with Whipple created certain trusts as between them, in reference to sales by them of interests in these patents, and affirms the same thing here in paragraph 19, and generally through the bill, but insists that the company, instead of paying it over to his accredited agents (which the company was bound to do if Whipple and Dickerson was able to convey the interest at all), was bound to keep the share which he claimed that Whipple and Dickerson held for him in trust, and should account for to him.

Nor do we advert to the fact that upon the records of the Patent Office the legal title of the two important patents, as Ambler regards them, were in Whipple and Dickerson, and that Ambler was seeking to attach a trust thereupon in Whipple and Dickerson, and sued out no injunction for the purpose of preventing sales, for the reason that Ambler is insisting here upon full power and authority of Whipple to make these sales by affirming these sales, and insisting upon their full validity.

V. If this action was in the nature of an accounting, then the same objection that was fatal to the former suit between the parties to this suit and others, would be equally fatal to this, viz: that Whipple was not a party defendant and could not be made so, as he resides out of this district.

The trust and the partnership between Ambler and Whipple, and the authority conferred by Ambler upon Whipple, was in full force at the time this sale of the interest in these patents was made to the com-

284 pany, and it is totally unimportant whether the partnership had been dissolved and the power revoked years afterwards, if it has been done. But the complainant repudiates all idea of accounting as between himself and his copartner or co-owner and these defendants, and claims damages for a fraudulent conspiracy.

VI. The complainant seems, by his argument, to think that because he asks for a discovery, that that fact alone would support his bill, when he shows by his own bill that he has already obtained the discovery he seeks by taking the deposition of these defendants upon the same subject, if the scope of the bill gave them any right to a discovery.

As there is no case, as we think we have demonstrated, for a bill in equity, this bill can no more be supported by a prayer for a discovery than any other suit at law sounding in damages.

GLOVER & SHEPLEY,
Solicitors for Defendants.

285 *Subpœna in chancery.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, sct.:

In the circuit court of the United States in and for said district.

The President of the United States to Charles P. Chouteau, Edwin Harrison, the heirs and legal representatives of Jules Vallé, deceased, Felix Vallé, Gerard B. Allen, Charles H. Peck, George H. Rea, Theodore Laveille, Charles P. Warner, Stilson Hutchins, the heirs and legal representatives of John Kupferle, deceased, Frank Gregory, Oliver B. Filley, James G. Blunt, Merritt H. Insley, and Albert C. Allithorpe, greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States in and for the eastern district of Missouri, on the first Monday of September next, at the city of St. Louis, then and there to answer the bill of complaint of Augustin I. Ambler, a citizen of the State of New York, filed against you on the 8th day of August, 1877. Hereof fail not.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 9th day of August, 1877.

286 Issued at office, in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.] M. M. PRICE, *Clerk*,
By A. P. SELBY, *Deputy*.

MEMO.—The defendants to enter their appearance in this in the clerk's office, on or before the day at which the writ is returnable; otherwise the bill may be taken pro confesso.

M. M. PRICE, *Clerk*,
By A. P. SELBY, *Deputy*.

Endorsed on said writ is the following return of service, to wit:

Return.

UNITED STATES OF AMERICA,
Eastern District of Missouri, sct:

I return this writ executed by delivering one copy thereof to C. P. Chouteau, one copy to G. B. Allen, & one copy to O. B. Filley, on the 10th day

of August, 1877; further, by leaving one copy with S. C. Beer, she being over 16 years of age and a member of the family of the within-named Theodore Laveille, at said Theodore Laveille's usual place of abode, on the 11th day of August, 1877, in the above district.

H. W. LEFFINGWELL,
U. S. Marshal,
By JOHN B. PADDLEFORD,
Deputy.

287 I return on this writ that I have delivered a copy thereof to J. Smith, he being over 16 years of age and a member of the family of the within-named E. M. Harrison, at said E. M. Harrison's usual place of abode; by leaving one copy with Kate Donahue, she being over 16 years of age and a member of the family of the within-named C. H. Peck, at said C. H. Peck's usual place of abode; by leaving one copy with the wife of Geo. H. Rea, she being over 16 years of age and a member of the family of the within-named Geo. H. Rea, at his usual place of abode; by delivering one copy to C. H. Warner; all these on the 11th day of August, 1877; and by leaving one copy with the wife of Stilson Hutchins, at his usual place of abode, she being over 16 years of age, and a member of his family, on the 13th day of August, 1877, in the above district.

H. W. LEFFINGWELL,
U. S. Marshal,
By E. S. ALBRIGHT, *Deputy.*

I return on this writ that I have delivered a copy thereof to F. S. Gregory on the 10th day of August, 1877, in the above district. The within-named Felix Vallé, the heirs of Jules Vallé, the heirs of Kupferle, J. G. Blunt, M. H. Insley, & A. C. Allithorpe could not be found in time for the return of this writ.

H. W. LEFFINGWELL,
United States Marshal, Eastern District of Missouri,
By C. E. SOEST, *Deputy.*

288 And afterwards, to wit, on the 23rd day of August, A. D. 1877, the following further proceedings were had and appear of record in said cause, to wit:

Appearance entered.

A. I. AMBLER, COMPLAINANT,
vs.
CHAS. P. CHOUTEAU ET AL., DEFENDANTS. } 1054.

This day come the defendants, Charles P. Chouteau, Edwin Harrison, Gerard B. Allen, Charles H. Peck, George H. Rea, Theodore Laveille, Charles P. Warner, Frank Gregory, and Oliver B. Filley, by their solicitors, Messrs. Glover & Shepley, and enter their appearance herein.

And afterwards, to wit, on the 27th day of September, A. D. 1877, at a regular term of said court, the following further proceedings were had and appear of record in said cause, to wit:

A. I. AMBLER, COMPLAINANT,
vs.
CHAS. P. CHOUTEAU ET AL., DEFENDANTS. } 1054.

This day come the defendants, by their solicitors, Messrs. Glover & Shepley, and file demurrer to the bill of complaint; also the said parties file stipulation as to the hearing of said demurrer.

Said demurrer and said stipulation are in words as follows, to wit:

289 *Demurrer.*

In the circuit court of the United States for the eastern district of Missouri

EASTERN DISTRICT OF MISSOURI, *ss:*

AUGUSTIN I. AMBLER
against
CHARLES P. CHOUTEAU, EDWIN HARRISON, Gerard B. Allen, Charles H. Peck, George H. Rea, Theodore Laveille, Charles P. Warner, Frank Gregory, Oliver B. Filley, impleaded with others.

These defendants, Charles P. Chouteau, Edward Harrison, Gerard B. Allen, Charles H. Peck, George H. Rea, Theodore Laveille, Charles P. Warner, Frank Gregory, & Oliver B. Filley, not acknowledging all or any of the matters and things in the said bill of complaint contained to be true as alleged, do demur in law to said bill, and for cause of demurrer show that said complainant hath not by his said bill made such a case as entitles him in a court of equity to any discovery or any relief as prayed for in said bill, for that said complainant shows by his said bill that the above-named defendant made any contracts nor had anything to do with the subject-matter of the bill, and that they are therein stated to have
290 connection therewith simply and only as being members of a corporation, which corporation made the contracts and did the acts complained of, and it is not in any manner shown that they are or can be in any way affected individually by the matters and things therein complained of; that the complainant in his bill affirms the sales as made of the interest in the several patents by Whipple and Whipple & Dickerson to said corporation as the purchaser and at the same claims to recover from the defendants for the consideration already paid by the corporation and in a different manner from that contracted for; that the said bill shows no equity nor presents any ground for equitable relief.

Wherefore, for these and other good causes of demurrer appearing in said bill of complaint, these defendants demur to said bill, & to all matters & things therein contained, and pray to be hence dismissed with their costs.

GLOVER & SHEPLEY,
Solicitors for Defendants.

291 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Said defendants Charles P. Chouteau, Edwin Harrison, Gerard B. Al-

len, Theodore Laveille, & Oliver B. Filley, being duly sworn on their respective oaths, state that the above demurrer is not interposed for delay.

CHAS. P. CHOUTEAU.
OLIVER B. FILLEY.
THEODORE LAVEILLE.
GERARD B. ALLEN.
EDWIN HARRISON.

Sworn to & subscribed before me this 27th day of September, 1877.
[SEAL.] W. M. McPHERSON,
Notary Public, St. Louis City.

I, John R. Shepley, of counsel for defendants, hereby certify that in my opinion the above demurrer is well founded in point of law.

Stipulation submitting cause.

In the circuit court of the United States for the eastern district of Missouri.

AUGUSTIN I. AMBLER, COMPLAINANT,
vs.
CHARLES P. CHOUTEAU ET AL., DEFENDANTS. } No. 1054.

At the suggestion of the court, it is agreed between complainant
292 & the defendants filing a demurrer that the said demurrer filed in said cause shall be argued in writing, which arguments shall be sent & submitted to his honor Justice Miller within forty days from the date thereof, and the decision which may be made thereon shall be filed in this court, & if filed after the adjournment of said court at this term, may be considered & taken & filed nunc pro tunc as of the last day of said term.

GLOVER & SHEPLEY,
Sol's for Def'ts.
T. W. B. CREWS,
Sol. for Compl't.

ST. LOUIS, *Sept.* 27, 1877.

And afterwards, to wit, on the 28th day of January, A. D. 1878, at said term of court, before Hon. Daniel F. Miller, circuit justice, the following further proceedings were had and appear of record in said cause, to wit:

Decree.

AUGUSTIN I. AMBLER, COMPLAINANT,
vs.
CHARLES P. CHOUTEAU ET AL., DEFENDANTS. }

This cause having been submitted heretofore to the court, on the demurrer of the defendant Charles P. Chouteau and others, who
293 joined in said demurrer, and the court having considered the argument of counsel, and being now fully advised in the premises, is of opinion that the bill of complainant does not make a case in equity suffi-

cient to call upon defendants to answer thereto, and the demurrer of defendants is sustained; and it is ordered and decreed that said bill be dismissed, and that the defendants recover their costs herein expended, to be taxed by the clerk.

And afterwards, to wit, on the 28th day of February, A. D. 1878, the following further proceedings were had and appear of record in said cause, to wit:

Appeal allowed.

AUGUSTIN I. AMBLER, COMPLAINANT,
vs.
CHARLES P. CHOUTEAU ET AL., DEFENDANTS.

This day comes the complainant, by his solicitor, before the honorable John F. Dillon, circuit judge, and prays an appeal from the decree herein to the Supreme Court of the United States, which appeal is allowed upon the filing of an appeal bond in the sum of five hundred dollars; and it is ordered, that upon the filing and approval of said bond that the clerk of this court make out and certify a transcript of the record and pro-
294 ceedings in this case to the Supreme Court of the United States.

And afterwards, to wit, on the 16th day of October, A. D. 1879, at a regular term of court, the following further proceedings were had and appear of record in said cause, to wit:

Appeal bond approved.

AUGUSTIN I. AMBLER, COMPLAINANT,
vs.
CHARLES P. CHOUTEAU ET AL., DEFENDANTS.

Now comes the complainant, by his solicitor, and files his appeal bond in the sum of 500.00, which is approved and ordered to be filed as a part of the record herein.

Said bond being in words and figures as follows, to wit:

295 Know all men by these presents that we, Augustin I. Ambler, as principal, and W. Nicholas are held and firmly bound unto Charles P. Chouteau, Edwin Harrison, the heirs and legal representatives of Jules Valle, deceased, Felix Valle, Gerard B. Allen, Charles H. Peck, George H. Rea, Theodore Laveille, Charles P. Warner, Stilson Hutchins, the heirs and legal representatives of John Kupferle, deceased, Frank Gregory, Oliver B. Filley, James G. Blunt, Merritt H. Insley, and Albert C. Ellithorpe, in the full and just sum of five hundred dollars, to be paid to the said Charles P. Chouteau et al., their heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals, and dated this day of , in the year of our Lord one thousand eight hundred and seventy-nine (1879).

Whereas, lately, at the September term, 1879, of the circuit court of the

United States for the eastern district of Missouri, in a suit depending in said court between Augustin I. Ambler, No. 1054, plaintiff, and Charles P. Chouteau et al., defendants, a decree was rendered against the said plaintiff at the said term of the court, and the said plaintiff having obtained an appeal of the said court to reverse the said decree in the aforesaid suit, and a citation directed to the said defendants citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now, the condition of the above obligation is such that if the said Augustin I. Ambler shall prosecute said appeal to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

AUGUSTIN I. AMBLER. [SEAL.]
W. NICHOLS. [SEAL.]

Approved by—

A. KREKEL, *Judge.*

296 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify that the writing hereto attached to be a true copy of the pleadings and proceedings, with exhibits, in case No. 1054 of Augustin I. Ambler, plaintiff, against Charles P. Chouteau et al., defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this 16th day of October, in the year of our Lord eighteen hundred and seventy-nine.

[SEAL.]

M. M. PRICE,
Clerk of said Court,
By A. P. SELBY, *Deputy.*

(Indorsement on cover:) No. 128. Augustin I. Ambler, appellant, vs. Charles P. Chouteau et al. E. Missouri C. C. U. S. Filed 27th October, 1879.

17 586

OFFICE SUPREME COURT U.S.
FILED
NOV 23 1882
JAMES H. McKENNEY, CLERK

Supreme Court of the U. S.

NO. 128.

AUGUSTIN. I. AMBLER, *Appellant.*

vs.

CHARLES P. CHOUTEAU, EDWIN HARRISON, GERARD B. ALLEN, CHARLES H. PECK, GEORGE H. REA, THEODORE LAVEILLE, CHARLES P. WARNER ET. AL.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

BRIEF OF APPELLANT.

Filed November 1882,

Supreme Court of the U. S.

No. 128.

AUGUSTIN I. AMBLER, *Appellant*,

vs.

CHARLES P. CHOUTEAU, EDWIN HARRISON, GERARD B. ALLEN, CHARLES H. PECK, GEORGE H. REA, THEODORE LAVILLE, CHARLES P. WARNER, *et. al.*

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

Brief of Appellant.

Filed November, 1872.

THE BILL AS DRAWN.

In view of the remarkable theory of the defence and the still more remarkable decree of the Court below, in sustaining a general demurrer, going to the whole equities of the bill, charging a scheme of fraud and conspiracy, and showing, by fully and at large setting out the overt acts of the defendants, and each of them, by which the same is sustained, praying a discovery of facts unknown to the complainant, but known to and in the

possession of the defendants, and for special and general relief; and for the further reason, that the bill was prepared and drawn by the complainant, and is assumed to have violated, in some way not shown, or even hinted at, some technical form of such a pleading, I deem it proper to present the legal form and true status of the bill by a statement of its form and character, to meet the assumptions indicated, but not made known, in the theory of the defendants and the decree of the Court.

The Court will also consider the fact, that the Statutes of the United States provide that every litigant in the United States Courts has the right to appear in his own behalf and manage his own cause; and this is a clear presumption of law, that close technical objections cannot and should not be permitted to stand in the way of manifest justice and right, and that it is the duty of the Court to waive mere technical objections and go at once to the essential materiality and manifest justice and equity of the cause. But in this case, notwithstanding the assumptions of the counsel for the defendants and the decree of the Court below, the bill *is* drawn with more than ordinary care, in form and substance, to meet all the requirements of a bill in equity, as by a comparison of the bill with the following statement of well settled principles of good pleading will clearly show.

There is another reason for this statement, namely: I wish to invoke in this behalf Sec. 1979 of the Revised Statutes of the United States, which declares that "every person who, under color of any statute or ordinance, regulation, custom, or usage of any State or Territory, subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof, to the deprivation of any rights, privileges

or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

I am a citizen of the United States, within the jurisdiction of the Court, and I have been most shamefully and unlawfully deprived of "rights, privileges and immunities secured to me by the Constitution and laws" of the United States, and I ask for redress in equity.

STATEMENT OF FORM AND SUBSTANCE OE THE BILL.

1. The bill shows that it is addressed to the right judge and the proper Court.

2. That the complainant is a resident of the City of New York, a citizen of the United States, and that he is within the jurisdiction of the Court; that the defendants are citizens, and within the jurisdiction of the Court.

3. The bill then proceeds to set forth a scheme of fraud, combination and conspiracy on the part of the defendants and their confederates, known and unknown, to cheat, swindle and defraud the complainant of rights, privileges and immunities secured to him by the Constitution and laws of the United States.

4. The bill then proceeds to narrate and fully and at large set out the plans and circumstances, directly and affirmatively, of the fraudulent and overt acts committed by the defendants and each of them, by which the scheme was carried out and made effective for the use and benefit of the defendants and to the injury of the complainant.

5. The scheme being clearly set out and the overt acts alleged in manner, form and substance, as required by

good pleading, the foundation and gravamen of the bill are complete.

6. Discovery is sought of facts unknown to the complainant, but known to and in possession of the defendants; all the facts known to the complainant are plainly and clearly stated from beginning to end.

7. The bill is properly divided into articles and successively numbered, and each one of which includes an allegation of a specific and material fact, so that the respondents can answer definitely and specifically each part of the complainant's case, in accordance with his wish, or as he may be advised—to admit, deny or qualify.

8. The bill then concludes with a proper and specific prayer for discovery; special for that to which the complainant deems himself entitled, and for general relief.

STATEMENT AS TO THE NATURE OF THE BILL, AND DICTUM OF THE PLAINTIFF.

The statement of the cause of action as set out in paragraphs 7 and 10 of the bill, having been criticised by the counsel for the defendant, it is proper to say here, that the cause of action deemed by the complainant to be made by the matters and things set out in the bill, might lawfully and properly be rendered in view of the charges, allegations and overt acts of fraud committed upon the complainant by the defendants, as follows, namely: The bill shows an action on the case in the nature of a criminal conspiracy, or in that of an action on the case at law for damage and injury done. But suppose there is an error of statement here as to the true character and nature of the action, it could *not* have been intended by the plaintiff as a *dictum* to wipe out and de-

stroy his legal rights and equities as made by the pleading assailed upon this technical ground solely. An able lawyer, in writing upon reform and practice, says: "The *law* SHOULD declare in express terms, that *no* rule, regulation or precedent of practice or pleading shall *ever* be allowed to defeat substantial justice between the parties in any cause." And may not this principal be safely adopted by the Supreme Court of the United States and substantial justice be done in this behalf? It is true, the plaintiff sets out in paragraphs 7 and 10 as aforesaid, a *dictum* of his cause of action as he understands it, as made by the bill to be as aforesaid, "an action on the case in the nature of a conspiracy *formed*," and (see p. 10) for the purposes aforesaid with the intention of cheating, swindling and defrauding your orator of his rights in the property aforesaid, and of the proceeds, assets and profits arising and to arise therefrom, and for an account of which your orator prays relief in damages for the wrong and injury done. This *dictum* of the plaintiff as to the nature of his bill, is controlled by the matters and things therein set out, and these matters and things show the scheme of fraud and conspiracy formed, and the overt acts by which the same was carried out, and *this* scheme and *these* acts form the true foundation and gravamen of the bill; and this *dictum* or statement, cannot lawfully, and should not in fact, be magnified into the whole legal intendment of the whole bill to the manifest violation of every principle of equity and justice. The defendants are, and have been for years, in possession of the property covered by and chargeable with the trust. They have, by the unlawful use of a statute of the State of Missouri, deprived, and do now deprive the plaintiff of his rights, privileges and immunities secured to him by the constitution and laws of the United States.

STATEMENT OF THE CASE AS SHOWN BY THE BILL.

The statement of the case will be found fully, clearly and at large set forth in the bill, but the following brief resume of some of its material facts, it may be proper to include in our brief.

This litigation grows out of the invention of the complainant, first conceived and reduced to form March 27, 1869; that after a considerable number of experiments between March 27 and May 24, 1869, Rodney M. Whipple and A. I. Amb'er entered upon an agreement in writing on the latter date to obtain patents and prosecute the enterprise together, and on the same day an application was made for a patent and duly filed in the Patent Office of the United States, upon which letters patent were issued to Whipple and Ambler, No. 92,687, bearing date July 13, 1869. On May 25, 1869, Ambler made to Whipple an assignment in trust of his undivided interest, the better to enable Whipple to carry on the business of the partnership formed on the preceding day. See pages 39, 40, 41, 42, 43, 44, 45 and 46 of the Record.

From this time experiments were continued at the shops of Pettit & Dripps, in Washington City, by Whipple and Ambler up to on or about the 23d day of August, 1869, when, after a very successful experiment, Whipple seized the invention and apparatus constructed at the shops aforesaid, and excluded Ambler from all control. During the period of said experiments Ambler had made very valuable improvements, both in the principle and mechanism of the invention, for which he had the lawful and exclusive right to obtain patents, and which fact was well known to Whipple, and of which he (Whipple) subsequently availed himself through the instrumentality of one Thomas S. Dickinson, who arrived in Wash-

ington from Chicago, September 3d, 1869, and who was fully advised of the rights of Ambler by Whipple. Whipple and Dickinson went together to the shop of Pettet & Dripps, where the apparatus was located, on the 4th of September, 1869. " Precisely what took place between Whipple and Dickinson will probably never be accurately known—we must judge of *that* by the results which followed. See Supreme Court decision, pages 54 to and including 69.—Record.

A short time thereafter Dickinson made application for letters patent on the improvement of Ambler, and assigned one-half to Whipple. On this application letters patent were issued to T. S. Dickinson, No. 95,665, October 12, 1869, (see p. 46,) and subsequently thereto Whipple and Dickinson made another application for letters patent of the United States; also on the invention of Ambler, and letters patent, No. 102,662, were issued May 3, 1870.

With these patents fraudently, clandestinely and surruptitiously obtained, these now open pirates proceeded to awaken the public interest by large displays and extended publications of the invention in the name of Whipple and Dickinson. With these subsequently adjudged fraudulently obtained advantages, they proceed to connect others with themselves to carry out the scheme planned and inaugurated at the shops of Pettit and Dripps in September, 1869. They go to Baltimore, New York, Philadelphia, Rhode Island, Chicago, St. Louis, Des Moines and other places. At St. Louis they meet the defendants; and it is charged that after a full understanding between Whipple and Dickinson, and Blunt and Insley, whom they had previously enlisted in their scheme, and with the other defendants they

proceeded to enlarge the fraud by the formation of a large stock company in St. Louis; and, in pursuit of the same scheme, the color of the statue of Missouri was used to inaugurate and form a combination of individuals, and incorporate fraudulently the Missouri Liquid Fuel and Illuminating Company, which was effected after several meetings of the conspirators at parlor No. 5, Southern Hotel, St. Louis, on the 18th and 23d of December, 1871, see p. 92 of the Record. They then proceeded to marshal, manipulate and divide between them the stock of said company, as fully described and set forth in the bill—see par. 34 to and including 44, pages 13 to 18 inclusive.

The appellant finding the defendants in possession of the patent, partnership and trust property, as decreed by the Supreme Court, belonging to Ambler, he brought his suit in equity for the adjudication of his rights and the recovery of his property.

ABSTRACT OF THE BILL.

To the Honorable the Judges, &c.

Augustin I. Ambler, a citizen of New York, brings this his bill of complaint against Charles P. Choteau, Edwin Harrison et al, citizens of St. Louis, Mo.; James G. Blunt, et. al of Kansas; and Albert C. Allithorpe of Illinois, and they are directors and stockholders in the Missouri Liquid Fuel and Illuminating Company, and hold interests therein; said company having been fraudulently incorporated under the laws of Mo., December 18th, 1871, and the Articles of Association having been filed and recorded in the offices of the Secretary of State, December 19th, 1871, with a capital stock of $500,000.

2.

Thereupon your orator complains and says: he is now and has been since the 13th of July, 1869, and previous

thereto the rightful owner of certain valuable interests in inventions, discoveries and improvements in the manufacture of gas from petroleum, set forth in the letters patent of the U. S., No. 92, 687, issued July, 13, 1869, to Rodney M. Whipple, and Augustin I. Ambler, No. 95, 665, issued October 12th, 1869, to Thomas S. Dickerson and No, 102, 662, issued May 3d, 1870, to Thomas S. Dickerson and Rodney M. Whipple.

That half of said patents Nos. 95, 665, and 102, 662 were received and held by said Dickerson and Whipple, as trustees in trust for your orator. And your orator is also the owner of certain rights, franchises, benefits, sales and receipts arising therefrom and to arise therefrom, as decided in favor of your orator, Nov. 30th, at October Term, 1874, of the Supreme Court of the United States, as will hereinafter more fully appear.

3.

That the *retrospective* interest of your orator in said inventions, discoveries, and improvements in the manufacture of gas from petroleum, and the rights, franchises, benefits, privileges, sales and receipts arising therefrom, as rendered by the decision of the Supreme Court of the United States in favor of your orator in that behalf, your orator estimates and believes to be of the value of over $4,000,000, not including the *prospective* interest of your orator therein and hereafter to arise therefrom; and your orator avers that these defendants, and each and every of them, jointly and severally are chargeable therewith and legally bound therefor, by reason of the premises hereinafter set forth, either by implication, construction or operation of law or otherwise.

4.

That certain trusts have heretofore been formed and

created in this behalf, both express and implied. *Express* by instruments in writing, under seal, duly evidencing the trust; and *implied*, by construction or operation of law. Wherein Rodney M. Whipple and Thomas S. Dickerson are decreed by the Supreme Court of the United States, trustees (prospective and retrospective) of your orator to the extent of one-half of the letters-patent Nos. 95, 665, and 102, 662 aforesaid, and of the profits realized by them or either of them from the use or sale, or otherwise arising from said patents, as will hereafter more fully appear.

5.

That a fraudulent breach of trust in this behalf has heretofore been made by Rodney M. Whipple, the trustee raised and created by the instruments in writing under seal as aforesaid, aided and abetted by Thomas S. Dickerson by seizing and appropriating to their own use, and behoof the franchise and trust property of your orator to the entire exclusion of all the rights of your orator therein, and by the appropriation and use of the proceeds derived from the sales, and alienation of the trust property in violation of your orator's rights in the premises, and these defendants have fraudulently concurred, joined, aided and abetted therein *with a full knowledge of the trust and the breach of the trust by Whipple and Dickerson*, by the fraudulent appropriation of the trust property, and by other means and acts committed in fraud and violation of the same with intent to defraud, and with full knowledge and in violation of the rights of your orator.

6

That the subject matter hereof, and the foundation and *gravamen* of this bill is: The franchise, the trust,

the breach of trust, the intent to defraud and swindle your orator, the collusion, conspiracy and *fraud* between the defendants and Whipple and Dickerson, as the trustees of your orator; the rights and remedies of your orator against these defendants and the prayers for relief.

7.

That this cause is an action on the case, in the nature of a conspiracy founded on the fraudulent intent and specific acts of the defendants, and each and everyone of them to plan, to scheme, to cheat, to swindle and defraud your orator of his franchise and his rights in the patent and trust property aforesaid, and that said plan and scheme consisted in an agreement and conspiracy with a common design to do an unlawful act, and which plan, scheme, agreement, and conspiracy, having a common design to do an unlawful act, was fully carried out, as will hereafter more fully appear, to the great damage and injury of your orator.

8

That said plan, scheme, &c., was first formed and set on foot by Rodney M. Whipple and Thomas S. Dickerson on or about the 4th of September, 1869, at the shops of Pettit & Dripps, corner 13th St. and Ohio Ave., Washington, D. C., secretly, serreptitiously and clandestinley, and that the object and intention of said conspiracy, as far as your orator has been able to learn thereof, was—

1st. To seize and appropriate to their own use and the use of their co-conspirators the invention of your orator in gas generators, and the proceeds thereof, and to be derived therefrom.

2d. To serreptitiously and fraudulently apply for and obtain letters patent thereon, in the name of Thomas S.

Dickerson, for the use and benefit of Whipple & Dickerson, in pursuit of the conspiracy aforesaid.

3d To ignore and destroy the *bona fide* co-partnership of Whipple & Ambler and the trust created in Whipple by Ambler, and to create, upon the invention of your orator, the fraudulent co-partnership of Whipple & Dickerson.

4th. To obtain patents surreptitiously and fraudulently upon said invention; to surrender the same and obtain re-issues thereon, and to clandestinely and fraudulently manufacture, use and vend the same by large public displays and trials of the invention in the names of "Whipple & Dickerson," to the exclusion of your orator, the true inventor.

6th. By the combination and association with them of large numbers of individuals in various parts of the country.

7th. By the formation and incorporation of large stock companies in different States of the Union.

8th. By the sale of the State and territorial rights, privileges and licenses to a large number of individuals for large sums of money, lands, stocks, bonds, notes and other securities, and to appropriate the same to their own use and behalf and that of those who might therein and thereafter become associated and connected with them, and that in pursuit of this plan and in furtherance of this scheme of fraud, now established in said Whipple & Dickerson, (by the Supreme Court of the United States, November 30, 1874, in Ambler v. Whipple & Dickerson,) and defendants, Blunt and Insley, united with said Whipple & Dickerson, and colluded, confederated and conspired with them, knowingly and

with intent to cheat and defraud your orator by pretending, first, to purchase of said Whipple & Dickerson, or one of them, certain rights in said invention and patents for certain territory, or an interest therein; and they, said Blunt and Insley, thereafter and on being fully advised of said plan, scheme, agreement and conspiracy, at once entered into the same with said Whipple & Dickerson, at Washington, about April, 1870, pending the suit of Ambler v. Whipple & Dickerson, in the Supreme Court of the District of Columbia, in relation to said patents and the trust property, and said Blunt and Insley, then and thereafter, knowingly aided, abetted and participated in said conspiracy and in the proceeds thereof, with a full knowledge of the same, and of said trust, of said suit and all things relating thereto; and that thereafter in carrying out said fraud and conspiracy against your orator large stock companies were formed on said patents by said Whipple & Dickerson and said Blunt and Insley, to wit:

"The Keystone Liquid Fuel Co. of Pennsylvania," in May or June, 1870.

"The Liquid Fuel Co. of New Jersey," March 30, 1871.

"The Missouri Liquid Fuel and Illuminating Co.," December 18, 1871.

"The Illinois Liquid Fuel and Illuminating Co.," March 29, 1872.

"The National Gas and Iron Co.," August 1, 1873.

"The Chicago Railway Construction Co.," August 1, 1873.

And the charter of the "Chicago and Illinois River Railroad Co." was fraudulently purchased for the use

and benefit of the conspirators by the defendants, or some of them, in the interest of the rest.

9

That all the said companies, except "The Illinois River Railroad Co.," and many others to your orator unknown, were fraudulently incorporated and organized by the defendants, or some of them, and other conspirers, unknown to your orator, acting with said Whipple & Dickerson and Blunt and Inslsy, and the other defendants herein, upon letters patent Nos. 95,665 and 102,662, or one of them, or the proceeds thereof, the trust property aforesaid, by a fraudulent use of the corporate laws of the State in which they were incorporated, in furtherance of the plan, scheme, agreement and conspiracy aforesaid; that the stock of said companies and the proceeds derived therefrom were fraudulently seized and appropriated to the use of Whipple & Dickerson, Blunt and Insley, and the other defendants in this bill, for the purpose of still further carrying out, enlarging and extending the said scheme of fraud and conspiracy, to the great damage of your orator, and that the other defendants to this bill entered into said scheme in the fall and winter of 1871, and thereafter, or previously thereto, after being fully advised, and with due notice of the said plan, conspiracy, &c., by Whipple & Dickerson, and Blunt and Insley.

That it has been pretended that Whipple advised and informed them that he had purchased the interest of your orator in the partnership and trust property aforesaid, and that he (Whipple) had defeated your orator in the suit of Ambler v. Whipple & Dickerson in the Supreme Court of the District of Columbia, thereby putting said defendants on notice at the time of the purchase by, or transaction with these defendants, and

previously thereto of the legal and equitable rights of your orator and of the suit then depending in said Court in relation thereto; but in very truth Whipple & Dickerson did make known to these defendants the real plan, scheme, agreement and nature of the conspiracy to defraud your orator, as first set on foot by them at the said shops of Pettit & Dripps, as your orator has reason to believe from the facts and evidences of record bearing thereon, and he therefore charges the same so to be and prays for discovery in relation thereto. And your orator further charges that these defendants, and each of them, with intent to cheat and defraud your orator, did unite, collude, combine and conspire with said Whipple & Dickerson, with full knowledge of the agreed upon plan, scheme and conspiracy aforesaid, to injure and defraud your orator of his rights in his patent and trust property aforesaid, and all the said parties entered into and participated in said conspiracy, with full knowledge of all the facts and responsibilities of so doing.

10.

That your orator is aware that there are other separate and distinct causes of action against said defendants, singly and severally, by reason of their unlawful and inequitable acts in said premises; that is to say:

1st. They are, and were all privies, knowing to the suit of Ambler v. Whipple and Dickerson in the Supreme Court of the District of Columbia, by reason of their purchase of the partnership and trust property aforesaid, and their various transactions in regard thereto and they are in law and in fact, therefore, co-trustees with Whipple and Dickerson, said defendants, and are with them bound and liable for the fraudulent acts of

Whipple and Dickerson, and may be properly made parties' defendants with said Whipple and Dickerson by supplemental bill brought by your orator, or such receiver as may be had in the premises.

2d. They are all liable to suit for fraudulent and unlawful dealings with the property of the partnership and trust between W. and A., and in dealing with the fraudulent concern of Whipple and Dickerson for and on account of which a receiver was appointed May 11, 1877, in said cause.

3d. That there is just and lawful cause of action against all the aforesaid parties for all their acts affecting the said partnership and trust pending said said suit of Ambler v. Whipple and Dickerson.

4th. For the infringement of letters patent of the United States, No. 132,240, in the Eastern District of Missouri, and for all damages arising therefrom; but your orator shows that neither of said causes of action is included in this suit; and he insists that this suit contains, and is intended to contain but one cause of action and that is, *an action on the case in the nature of a conspiracy* formed with the *intention* of cheating, swindling and defrauding your orator of his rights in the property aforesaid, and of the proceeds, assets and profits arising and to arise therefrom, and for and an account of which your orator prays relief in damages under the rule of law in such cases to the full extent of the wrong and injury done.

11

That the said Whipple and your orator, in the spring of 1869 entered into an agreement in writing, and united together for the purpose of inventing and discover-

ing a suitable means to generate gas, or an inflammable vapor from petroleum through the agency of steam; and on the 24th of May, 1869, said Whipple and your orator made and executed under seal and filed in the United States Patent Office, a memorandum of agreement forming a partnership between said Whipple and your orator for a term of seventeen years, from July 13, 1869; (this partnership was dissolved by the Supreme Court of the District of Columbia, May 11, 1877.) That said memorandum of agreement was duly recorded in the Postoffice May 24th, 1869. A copy thereof is herewith filed.

12.

That on the following day, to wit, May 25th, 1869, your orator executed and delivered to said Rodney M. Whipple an assignment, in trust, of your orator's undivided one-half interest in said invention, and the letters patent or patents that might be issued thereon for the purpose of enabling said Whipple the better to conduct and manage the joint business. That said Whipple accepted the same and filed the executed agreement aforesaid the same day for record, and it was recorded the 25th of May, 1869. (A copy is herewith filed. This agreement was annulled May 11th, 1877, by the Supreme Court of the District of Columbia.

13.

That on the 24th of May, 1869, said Whipple and your orator made application as *joint inventors* for United States letters patent for an improvement in machines for generating gas from petroleum, termed "Whipple & Ambler's Steam Petroleum Gas Generating Apparatus," and letters patent No. 92,687, accordingly issued thereon July 13, 1869, to said Whipple and your orator. (A copy

of the same is filed herewith, marked " Ambler's Exhibit No. ."

14.

That on the 16th of December, 1869, the said Thomas S. Dickerson, made *ex parte* an application for United States letters patent for certain pretended improvements in gas generating or liquid fuel machines, in which application he was aided and abetted by said Whipple, the partner, agent and trustee of your orator, without his knowledge or consent for an alleged invention and discovery, which said Dickerson did not invent or discover, but which was invented and discovered by your orator.

That said Dickerson was, in or about the 4th of September, 1869, at Washington, D. C., inducted into the *arcana* of the said invention of your orator, and then and there became first acquainted and familiar with its machinery, construction and capabilities by said Whipple, and this, with a full knowledge of the relationship existing in the premises between said Whipple and your orator, and also of the rights and title of your orator in and to said invention and machinery thereof; and that said Whipple and Dickerson, on or about September 4, 1869, with wrongful and unlawful intent, colluded together to defraud and wrong your orator, and to cheat him of his vested rights to his said invention and discovery, and his rightful share of the profits thereof, and on or about the 16th of September, 1869, said Dickerson made application for letters patent as aforesaid, and, thereupon, letters patent No. 65,665 were issued October 12, 1869, to him and to said Whipple as the sole assignees of said Thomas S. Dickerson, and this without consultation with, and without the knowledge or consent of your orator, and to his great damage, loss and in-

jury. (Copy of said letters patent are marked " Ambler's Exhibit No. ," and filed herewith.)

15.

That on the 24th September, 1869, said Dickerson pretendedly assigned and conveyed to said Whipple one-half of his pretended interest in his said alleged invention for $1, and the Commissioner of Patents was by said Dickerson directed to issue jointly said patent to said Whipple and Dickerson, and the said assignment was accepted by said Whipple, and the same was consummated, and this without the consent or knowledge of your orator, and to his great damage, loss and injury and in fraud of his aforesaid rights in law and equity.

16.

Said assignment (a copy of which is herewith filed) was recorded September 27, 1869, in the United States Post Office, Liber 12, p. 160. (See Ambler's Ex. page 49.)

17.

That said Dickerson and Whipple, on or about April 15, 1870, jointly applied for other letters patent for a claimed modification of their said alleged invention, which they termed " A Process and Apparatus for using Liquid Fuel for producing Heat and Light," and by their further pretended claims to originality of invention, and in fraud and wrong of your orator obtained letters patent for the same, and were issued May 3d, 1870, No. 102, 662. (See copy of same marked " Ambler's Ex., " filed herewith, page 30.)

18.

That your orator filed a bill in Chancery, the 4th Jan., 1870, in the Supreme Court, D. C., against said Whipple and Dickerson, service had same day on Defendants,

and their appearance duly entered. (See No. 1,873, Eq. doc. 10 of said Court, Ex. page 54.)

This suit was brought for violation of the partnership and trust relations between your orator and said Whipple, as created by the said agreement of May 24th, 1869, and the assignment of May 25th, 1869, with and to said Whipple, and as against said Dickerson as the joint colluder and confederate of said Whipple, in the breach of trust of the latter, and as against them jointly to compel an accounting, and to recover of them and their associates the large amounts of money and proceeds derived and received by them jointly and severally, from the said violations of trust, collusions, conspiracies, &c., against and to the damage of your orator as above and hereinafter set forth.

That the said suit was carried to the Supreme Court of the United States, and there decided in favor of your orator. (For particulars of which see "Ambler's Ex. herewith filed, pages 64 to 69 inclusive.)

19.

That said decision made at Oct. Ter, 1864 (Nov. 30); decided that the said Whipple and Dickerson held in trust for your orator half of the two patents, No. 95, 665 and 102, 662, as issued to Whipple and Dickerson, and all the rights, franchises, benefits, privileges, sales, and receipts arising or to arise therefrom. (See copy of Mr. Justice Miller's opinion herewith filed and marked "Ambler's Ex. " pages 64—69.

20.

Upon said patents large sales were made during the pendency of the action aforesaid in the Supreme Court, D. C., by said Dickerson and Whipple, and their agents,

assignees and confederates in the scheme of fraud upon your orator as aforesaid. (See "Ambler's Exhibits 10 and 11," herewith filed.) That said sales were all fraudulent. That the sales made by "Dickerson and Whipple" in their name, instead of in the name of "Whipple and Ambler," was a gross and fraudulent violation and breach of trust against your orator by said Whipple, aided by said Dickerson, and all the defendants in this bill, and knowingly.

That nowhere in the said scheme of fraud was provided or contemplated any means of protection of your orator, or the preservation of his one-half share in said patents and their proceeds, but he and his rights were grossly and criminally neglected and ignored.

That your orator is not in possession or control of the conveyances, transfers, or other instruments by which the said sales were made, and proceeds derived from said patents, &c., by the said Whipple and Dickerson and the said colluders, and confederates in the said scheme of fraud upon your orator, but he craves leave to refer to them, and each of them, in general and in detail, when produced, and he further claims leave to produce the same or certified copies, or original at his option, and power so to do.

21.

That your orator applied for letters patent on the same inventions previously patented by Dickerson and Whipple (viz.: Nos. 95, 665, and 162, 662), on or about the 9th May, 1870, and your orator's application was adjudged in interference with the said two patents to Whipple and Dickerson.

On February 3d, 1872, after due trial and hearing, priority of invention over both said patents, 95,665 and

102, 662, was awarded and decreed by the examiner to your orator. (See copy decision herewith filed marked " Ambler's Ex. 12.")

22.

That from said examiner's decision, Dickerson & Whipple appealed to the Board of Chief Examiners, and by them the first decision was affirmed May 9, 1872. [See copy of affirmatory decision, &c., herewith filed marked "Ambler's Ex. 13."]

23.

That from the decision of the Board of Chief Examiners, Whipple & Dickerson appealed to the Commissioner of Patents, and upon fair trial and hearing of Counsel, the decisions of the Examiner, and of the Examiners-in-Chief of the Patent Officer were affirmed, the Honorable Commissioner of Patents, Mr. Leggett, using the following language in giving his decision, (August 21, 1872:)

"*I have no hesitation in confirming the decision of the "Board (Chief Examiners,) awarding priority of invention "to him.*" (AUGUSTIN I. AMBLER.)

[See copy of decision herewith filed marked "Ambler's Ex. 14."]

24.

That upon said decision of the Commissioner of Patents, Letters Patent Nos. 131, 240, were issued to your orator, (September 10, 1872,) as the first sole, original and rightful inventor of the inventions described in Letters Patent Nos. 95, 665 and 102, 662. [See copy No. 131, 240, herewith filed marked "Ambler's Ex. 15."]

25.

And by reason of the cited premises, your orator alleges and charges against these defendants, jointly

and severally, full knowledge and lawful, timely notice of all the said decisions in his behalf and of the issue of Letters Patent 131, 240, thereunder.

26.

That said Dickerson & Whipple sold and conveyed the invention, &c., represented and described in Letters Patent 95, 665, (Trust property of your orator as aforesaid,) for Missouri, about 21st April, 1870, for $35,000 to defendants, Blunt & Insley, with the full knowledge of Blunt & Insley of the rights and title of your orator therein, and of the breach of trust aforesaid, and this without the consent or knowledge, directly or indirectly, by implication or otherwise of your orator, and without any provisions whatever for the preservation or protection of your orator's rights and interests; and by reason of the aforesaid premises, foreknowledge and due notice, and also in sound law, fair equity, honest dealing and good conscience, they, the said participants in said trust, sale and purchase, bound themselves to your orator, to the full discharge of the trust, and the obligations it imposed upon them.

27.

That said Dickerson & Whipple further and in like manner, and to Blunt & Insley, fraudulently sold and bargained away the invention for the manufacture of gas from petroleum, as represented and described in Letters Patent No. 102,662, and improvements thereunder, as might be made for the State of Missouri, on the 23d of December, 1871, for $35,000. That in respect to this transaction, the parties, and each of them had the same foreknowledge of the relationship in the premises existing between your orator and said Whipple and they were and are equally responsible to your orator for their and each of their criminal and unlawful

neglect of their bounden duty to him, as they were and are in respect to the fraudulent disposition of Letters Patents 95,655, and the interest covered thereby.

28.

That Dickerson & Whipple, in further violation of good faith, and to the great wrong and injury of your orator, on the 23d of December, 1871, contracted with the "Missouri Liquid Fuel and Illuminating Company" to carry to said corporation all such improvements as they might make upon the inventions described in said patents Nos. 95,665 and 102,662 for the nominal consideration of $5.00 and certain conditions named. [See copy of said contract herewith marked "Ambler's Ex. 16."]

That at the time said contract was entered into the directors of said "Missouri Liquid Fuel and Illuminating Company" had full knowledge of the relations of trust existing between your orator and said Whipple, and of the rights of your orator in the premises, and were cognizant that in the aforesaid transaction your orator was in no degree protected in said relations and rights, and that he and they were totally ignored in said transaction to his great wrong and injury, and for which they, the said directors, etc., are equally responsible with the said Whipple and the said Dickerson to your orator.

29.

That on or about the 18th of December, 1871, said defendants, Blunt and Insley, fraudulently, without his consent or privity, and to the great wrong, injury and loss of your orator, sold and conveyed to the said "Missouri Liquid, Fuel and Illuminating Company," such interest as they had fraudulently purchased of the said Whipple, and his confederate, Dickerson, of the afore-

said invention and discovery, trust property, as aforesaid for the consideration, as your orator is informed and believes, of $500,000; and this on the part of said Blunt and Insley, and the said "Missouri Liquid, Fuel and Illuminating Company," with full knowledge of the legal and equitable rights and claims of your orator in the premises, and in total disregard of and ignoring the same, and for which all the said parties together with the said Whipple and Dickerson are alike jointly and severally responsible to your orator, both in law and equity. (See copy of the articles of association of the said "Missouri Liquid, Fuel and Illuminating Company," among the directors of which are the said Blunt and Insley and A. C. Ellithorpe, defendants herein, herewith filed, marked "Ambler's Ex. 17."

30.

That the said Blunt and Insley's conveyance as aforesaid, dated December 23d, 1871, was filed in the United States Patent Office for record by the said "Mo. Liquid Fuel and Illuminating Company," January 13th, 1872, (see copy of said conveyance filed herewith marked "Ambler's Ex. 18.")

31.

And hereupon your orator complains and says the "Mo, Liquid Fuel and Illuminating Co." was fraudulently formed, founded and incorporated as aforesaid solely and exclusively upon letters patent of the United States, Nos. 95,665 and 102,662, and the invention therein described and set forth granted and issued to said Dickerson and Whipple, one-half decreed to be in trust for the benefit of your orator, as in the first paragraph hereof set forth and termed in the Articles of Association of said "Mo. Liquid Fuel and Illuminating

Co., "Whipple and Dickerson's patent for generating Gas from Petroleum and other Oleaginous Substances."

32.

That the object of said company is to produce heat and light, for manufacturing and illuminating purposes by the use of the invention, discovery and improvements aforesaid, and the machine or apparatus by which the same may be utilized, and the directors and stockholders of the "Missouri Liquid Fuel and Illuminating Co.," seek undue protection in the use and manufacture, in the State of Missouri, of the invention, discovery and improvements of your orator by the said letters patent, 95, 665 and 102, 692, and in fraud of the just rights and equitable title of your orator, and without providing any protection whatever to your orator for his share of the proceeds derived and to be derived therefrom.

33.

That the sale of Missouri by Whipple and Dickerson to Blunt and Insley was first made about April 21st, 1870, during the pendency of the suit of Ambler vs. Whipple and Dickerson, in fraud of your orator's rights, and to promote the said scheme of fraud previously concocted and set on foot by Whipple and Dickerson; and, Blunt and Insley, pending the said suit, again purchased of Whipple and Dickerson the same franchise and for the same purpose, December 23d, 1871, and on the same day and for the same purpose defendants Blunt and Insley sold the same to the said "Mo. Liquid Fuel and Illuminating Co.," which company had been previously incorporated to aid and promote said fraud upon your orator, showing contemporaneous conveyances from Whipple and Dickerson to defendants Blunt and Insley, and from Blunt and Insley to the said "Mo.

Liquid Fuel and Illuminating Co.," just 21 days after the said decision of the Supreme Court of the District of Columbia, vs. your orator, complainant in said cause, in favor of said Whipple and Dickerson and your order, charges that the Defendants, Choteau, et. al., to this bill, knew of said decisions as soon as rendered by telegrams and otherwise, and before the purchase made by them of Whipple and Dickerson, and before the conveyance made by Blunt and Insley to the " Mo. Liquid Fuel and Illuminating Co.," and the contract with Whipple and Dickerson for the use and benefit of said company, and that your orator had perfected his appeal to the Supreme Court of the United States, and that the said " Mo. Liquid Fuel and Illuminating Co.," was incorporated with the intent to swindle and defraud your orator, and also to promote, extend and enlarge the fraud and conspiracy aforesaid; and your orator also complaining charges that said company by its directors, officers, &c., subsequently and with and for the same fraudulent intent and purpose purchased said property and franchises covered by the aforesaid trust pending the said suit, with a full knowledge (sufficient to constitute due legal notice) of the actual relationship of your orator to said Whipple, and of the duties and responsibilities of said Whipple and Dickerson and Blunt and Insley towards your orator, and that the said directors, &c., defendants, became parties to the aforesaid scheme of fraud, conspiracy and wrong-doing against your orator.

34.

That the forming of the said " Mo. Liquid Fuel and Illuminating Co." was a designed fraud and deceit upon your orator and the public, and whereby the corporation laws of Missouri were violated. The said company was

formed with a declared capital of $500,000, claimed to be fully paid up. The company then purchased as claimed the so-called Whipple and Dickerson's patent rights (as aforesaid) for manufacturing gas from petroleum, &c., of James G. Blunt and Merritt H. Insley for $500-000, $83,000 of which the said company agreed to pay in cash, and $417,000 in fully paid-up stock of said company, the performance of this contract by the company would leave but $83,000 of stock in the company, from which to pay the said $83,000 to Blunt and Insley, and without a dollar for working capital, or for any other purpose (except as hereinafter set forth).

To raise and pay this $83,000, subscribers to this capital stock were obtained, who gave their notes for the amount subscribed, with an understanding that said Blunt and Insley would give a transfer to them of an amount equal to their several subscriptions. Certificates of stock from the $417,000 of stock issued to them as fully paid-up stock, by which means their subscriptions would be doubled, or they would pay but 50 cents on the dollar for the actual stock received on account of subscription, as shown by the facts in the case of Chas. P. Choteau (defendant herein), to wit: Mr. Choteau subscribed $12,500 to the capital stock of said company, and received, December 25, 1871, certificate No. 1, for 125 shares, the par value per share being $100—$12,500; for which, in violation of the statute of Missouri under which the company was formed, he gave his note which he subsequently paid; Blunt and Insley then delivered said Choteau another certificate, No. 16, issued the same day for 125 shares of the par value of $12,500, for which he paid *nothing*. Mr. Choteau thus received for his subscription to said stock of $12,500 on his note for that amount $25,000 of fully paid-up stock in said company,

and the same may be declared of all the other subscribers to said stock, save said Blunt and Insley, who conveyed the patent right aforesaid.

35.

That the firm of Choteau, Harrison & Valle subscribed for $12,500 of said stock, which was issued to them December 25th, 1871, in certificate No. 2, for 125 shares, $12,500; for which, in violation of the said Missouri statute, said firm gave their note, which was subsequently met. Said firm was composed of Charles P. Choteau, Edwin Harrison, Jules Valle and Felix Valle, all of whom are made defendants herein. That Blunt and Insley also delivered to said firm, stock share certificate No. 17 for other 125 shares of said company which had been issued to said Blunt and Insley as part of the consideration named in the conveyance by them, for which said firm paid nothing. Said firm thus received 250 shares of the said "Missouri Liquid Fuel and Illuminating Co.," of full paid up stock for their note of $12,500, or $25,000 par value.

That by such transactions all the members of the said firm became co-conspirers and partners with the said Whipple & Dickerson and Blunt and Insley, in the said scheme of fraud to cheat, swindle and to otherwise wrong and injure your orator.

36.

That it was a part of the said combined plan of fraud upon your orator that the stock of the said "Missouri Liquid Fuel and Illuminating Co." should be and was issued and taken up by the subscribers in such a manner as would conceal the designs of the said conspiracy from your orator, yet would be perfectly understood and be co-operated with by the said conspirers, as will be ap-

parent by considering the following changes on the face and manner of the issue of stock by the company in pretended payment of the $417,000, value of fully paid up stock, to wit: The stock issued to Blunt and Insley was issued to double the subscription of any party subscribing, as in the case of certificate No. 16 for 125 shares issued to Blunt and Insley for $12,500, on account of the $417,000 of paid up stock, as considertion for the patent right, and conveyed to said Choteau by said Blunt and Insley as aforesaid.

The stock issued jointly, as appears upon its face, to "James G. Blunt and Merritt H. Insley," was in furtherance of the said fraudulent scheme, to be sold at 50 cents on the dollar and the proceeds deposited in the treasury of the company, by said Blunt and Insley, for its use as a sinking fund.

The stock issued to Blunt and Insley, respectively, was understood to go to them as their several shares of the residue of the said $417,000 of stock paid for the said patents. It was thus arranged and understood that Blunt and Insley, in the interest of said scheme of fraud, were to dispose of the stock of the company at 50 per cent. below par, and place in the treasury, as working capital, the sum of $42,000. A very small part of this same was used in the operations of the company.

37.

That in the same way, or in some similar or other manner, a large part of the notes given, money paid and and stock of the said company issued, went to said Whipple & Dickerson, or one of them, or otherwise, for their joint and several behalf, the facts in relation to which are well known to the defendants herein, and of which your orator prays discovery.

That it is generally and specifically shown that these defendants participated, aided, encouraged and shared in the proceeds and profits of the aforesaid scheme of Whipple & Dickerson, by accepting and receiving from Blunt and Insley a part of the results of the transaction, to wit: Said defendant Choteau gave his note as aforesaid for, and paid his subscription to the stock of said "Missouri Liquid Fuel and Illuminating Co." $12,500, and also accepted and received from Blunt and Insley a certificate for shares valued at a similar amount, for nothing. This latter was a part of the $417,000 of "paid up stock," received as a part of the consideration for the conveyance made by Blunt and Insley, and in which both Whipple & Dickerson, by their conveyance to said company, participated with them, and these facts apply to each and everyone of the various incorporators of said company, except said Blunt and Insley, the agents, assignees and confederates of said Whipple & Dickerson; and also excepting such of the defendants as did not pay their subscription, or those who left their certificates for stock in the company, subject to their order of issue to them, which was the case in a few instances only.

Your orator hereupon charges that the entire plan and scheme of the conspiracy aforesaid was fully communicated to the defendants herein, and upon which meetings were variously held at parlor No. 5, of the Southern Hotel, in St. Louis, and that at the meeting there held, December 19, 1871, there were present: Gerard B. Allen, Charles H Peck, Rodney M. Whipple, Theodore Saville, George H. Rea, Stilson Hutchins, Charles P. Choteau, James G. Blunt, John Kupferle, Wells Hendershot, Frank Gregory, Charles P. Warner, Albert C. Ellithorpe, Merritt H. Insley, E. A. Richardson and others.

The object of the meeting was explained by James G. Blunt, and the meeting was organized by the choice of Gerard B. Allen, President, and Stilson Hutchins, Secretary. The object was explained to be the organization of a stock company under the corporate laws of the State of Missouri upon the so-called Whipple and Dickerson patents for the manufacture of gas from petroleum etc.," which object was carried out by the incorporation or said "Missouri Liquid Fuel and Illuminating Company."

38.

That in order to carry out the aforesaid conspiracy and fraudulent objects, and to evade the rights of your orator in said invention and patents, and the subject matter thereof as well as the said suit of Ambler v. Whipple and Dickerson then pending in the Supreme Court of the District of Columbia, of which, as aforesaid, said defendants had knowledge, it was planned and agreed that the said "Missouri Liquid, Fuel and Illuminating Company," should be formed on a basis of $500,000 in fully paid-up stock; that said patents should be purchased of said Blunt and Insley, and Whipple and Dickerson, for $500,000—$83,000 of which should be paid to them in individual notes or written obligations by the Treasurer of the said Company or the individual members thereof, or which notes were to be received from the various subscribers to the stock for the amount of their respective subscriptions as heretofore declared.

That these notes were planned to go to Blunt and Insley and Whipple and Dickerson, who were to collect them, and of the amount collected thereon, they were to deposit in the Treasury for the use of the Company $20,000, leaving in the hands of Blunt and Insley and

Whipple and Dickerson $63,000 of the $83,000 (amount of the notes) and $417,000 of fully paid-up stock of the Company.

In furtherance of this plan, said stock was issued in part, as aforesaid, to Blunt and Insley to double the stock of the subscribers for the $83,000, reducing the $417,000 to $334,000 of stock, and this was further reduced by stock issued jointly to "James G. Blunt and Merritt H. Insley," for 84,000 shares or $84,000, which was to be issued for the benefit of the Company (E. E.) leaving 2,500 shares or $250,000 out of $417,000 to be distributed between Blunt and Insley and Whipple and Dickerson.

39.

That the actual consideration paid in said transaction to said Blunt and Insley and Whipple and Dickerson was, first, $83,000 less said $20,000; and 2,500 shares of said Company's stock at par value of $250,000. That of said $83,000 they paid said Company towards a sinking fund $20,000 aforesaid, and of the $417,000 named in the conveyance they paid back to the Company 840 shares of par value of $84,000, for which neither the Company nor the individual stockholders paid a dollar, nor was anything paid for the said $20,000.

It is thus shown that Company received of the vendors in the said transaction; first, $20,000, and, second, 840 shares of the $417,000 of stock issued to Blunt and Insley as the consideration for the purchase, and that the individual subscribers were paid by Blunt and Insley for joining the said conspiracy, certificates of stock at par value for double the amount of their subscriptions, and for which there was no lawful consideration whatever, and that all this was done in furtherance of the said

conspiracy to defraud and cheat your orator, etc., and this pending said suit of Ambler v. Whipple and Dickerson, and with full cognizance thereof, and of all thing thereto relating, by all of said defendants hereto.

40.

That these defendants conspired with Whipple and Dickinson to destroy the firm of Whipple and Ambler in their above acts, and also by various other acts of collusion and fraud, published to the world the fraudulent concern of "Whipple and Dickerson," and gave to said concern credit, support and character, by dealing with them, both direct and through their agents and confederates, by accepting the inducements held out to them by said Whipple and Dickerson, and by granting to them and permitting them extraordinary and unusual privileges and advantages in and about the premises of the Laclede Rolling Mills, the property of defendants Choteau, Harrison and Valle, at St. Louis, Mo., and by extending to Whipple and Dickerson the use of their names, influence and credit, and by holding these facts out to the world with the fraudulent design and intent of enhancing, extending and enlarging the credit, character and representations of Whipple and Dickerson in and about the premises, to the entire exclusion of the *bona fide* firm of Whipple and Ambler, and with special and particular intent to cheat, defraud and swindle Ambler of his rights in the partnership and trust property of Ambler, and with knowledge thereof, pending the suit of Ambler v. Whipple and Dickerson, and with lawful and timely notice of said suit, and of all things in relation thereto.

41.

That among the inducements held out by Whipple and Dickerson, and accepted by the defendants, to en-

ter into and become confederates in the scheme of fraud and conspiracy aforesaid, were first the large prospectus value, importance and magnitude of the invention in the arts and sciences, and especially in the manufacture of iron; and, gas for illuminating purposes; and, second, the certificates issued to and delivered by Blunt and Insley to each of the confederates to double the stock that each party subscribed for, amounting in the aggregate to $83,000, for which there was no lawful consideration, and for which they paid nothing, and which they secured as their share of the proceeds of the scheme in the transaction, and which is specifically set out as follows, namely: To Charles P. Choteau, certificate No. 16 for 125 shares of the par value, $12,500; Choteau, Harrison and Valle, certificate No. 17 for 125 shares of the par value of $12,500; to Charles H. Peck, certificate No. 18 for 100 shares of the par value of $10,000; to Stilson Hutchins, certificate No. 19 for 50 shares of the par value of $5,000; to Hutchins and Euring, for Stilson Hutchins, certificate No. 20 for 50 shares of the par value of $5,000; to George H. Rea, certificate No. 5 for 100 shares of the par value of $10,000; to Theodore Laveille, certificate No. 21 for 50 shares of the par value of $5,000, issued to Blunt and Insley, and by them returned and subsequently issued to H. I. Chusloph, and by them returned and reissued to H. Lowry by certificate No. 122, dated June 27, 1872; to Frank Gregory, certificate No. 22 for 50 shares of the par value of $5,000 —this certificate remaining in the hands of Choteau, subject to the order of Gregory; to Girard B. Allen & Co., 25 shares of the par value of $2,500. In this case

the agreement was the same as in the other cases where the certificate was not issued and remained in the hands of Choteau. A special condition was made in the case of Allen: that his company should pay their subscription in work at their shops in building machines, and on account of the same, Allen & Co., were to receive from Blunt and Insley other 25 shares, the same as their co-defendants,(Oliver B. Filley being a partner in the firm of Girard B. Allen & Co.;) to John Hupfule, 25 shares which stands in substantially the same condition as to that of Allen & Co.; to A. C. Ellithrope, certificate No. 23 for 50 shares, of the par value of $5,000, leaving 30 shares of the 840 shares only to be accounted for, and of which Ambler is not fully informed—the facts and evidences of which are with the defendants.

42.

That Choteau is now, and has been the President, and Stilson Hutchins, Secretary of said Missouri Liquid Fuel and Illuminating Company since its incorporation, December 18, 1871; that they signed the contract with Whipple and Dickerson, December 23d, 1871, as President and Secretary of said Company, and that they signed all the certificates of stock of said Company, issued to Blunt and Insley, and to all the subscribers of said stock from first to last inclusive; the first certificate No. 1, for 125 shares, having been issued and signed by Choteau, as President, and Hutchins, as Secretary, to Charles P. Choteau for his subscription note for $12,500 December 25, 1871, and the last certificate, No. 127 for 50 shares, was signed by Choteau and Hutchins to H. I. Christoph, February 8, 1873, as the acts of the corporation; ond in pursuance of the general plan of the scheme of fraud and conspiracy aforesaid. This last issue of

stock to said Christoph fixes the existence of said corporation at the date of the issue, and the appellant charges that said corporation *de facto* still and now exists as an incorporated company under the laws of the State of Missouri, if said company ever had a lawful corporate existence at all.

43.

Charges that Allen is a manufacturer of machinery in St. Louis, and was at the time of these transactions, and said Allen manufactured a number of the machines under the so-called Whipple and Dickerson patents, and, under the direction of Whipple and Blunt, and upon drawing plans and specifications furnished by Whipple and Blunt in pursuance of the general plan and common design of Whipple and Dickerson, their agents, assigners and confederates in the scheme of fraud and conspiracy aforesaid in violation of the partnership of Whipple and Ambler, and of the trust aforesaid, and pending the suit of Ambler v. Whipple and Dickerson aforesaid, and with full knowledge and timely notice of all things in relation thereto.

That said Allen kept no books, memoranda, or accounts of these transactions, or if he did they have been fraudulently concealed or destroyed, so that all evidence in relation to the manufacture of said machines at his shops have been removed out of the way, and all evidence in relation thereto, as far as Ambler can learn, must now depend upon the memory of the witnesses to the transactions sought to be astablished, pertinent to the issue in the cause, or in any other cause of action depending thereon. At the time of these transactions said Allen had full knowledge of Whipple and Dickerson's and Blunt and Insley's designs to cheat, swindle and defraud Ambler, and with such knowledge said

Allen gave to these conspirators aid, character and support in their unlawful dealings with the partnership and trust property of Ambler, with the intent of extending the fraud and of destroying the rights of Ambler, with a full knowledge of the trust, the suit, and of all things in relation thereto.

44.

That in an investigation of the facts in relation to the formation and proceedings of said company to obtain testimony in the cause of Ambler vs. Whipple and Dickerson aforesaid, it was discovered that there were no books of said company, except the stock-book, which was in the hands of Charles P. Choteau. That the memory of some of the defendants and directors of said company was remarkably deficient in respect to the most important transactions in connection with the formation and business of said company, including the payment of large sums of money, especially in the case of Peck and Rea, who had no remembrance of the payment of the $10,000 paid by each in their notes, or by cash subscriptions to said stock, but were remarkably distinct as to matters of trivial importance, as will appear by a copy of the testimony taken when produced at the bar at the hearing. (As thare was no hearing at the bar, and no trial upon the merits of the case, this testimony is not found in the record, the case now being before your Honors upon demurrer upon questions of law and fact, upon which the bill must be sustained or dismissed, as the case is made up and found in the record).

45.

That it was understood in the organization of said company, or immediately thereafter, that one of the in-

corporators of said Missouri Liquid Fuel and Illuminating Company should resign and give place to defendant Edwin Harrison, who should thereupon be elected and become a director in said company. and this plan was carried out accordingly, and Edwin Harrison did become a director and stockholder in said company, with a full knowledge of all the facts, and of all things in relation thereto.

46.

And hereupon Ambler charges specifically that said company was organized and conducted in all its proceedings, and in all its transactions clandestinely and secretly, with the object and intent to swindle and defraud Ambler, and to deceive the public, and to prevent any proper examination of the books, papers or records of said company, and that all the proceedings and businesss of said company were so managed as to mislead and prevent any person from obtaining the true facts in connection therewith, and to prevent such an exhaustive examination of its affairs as would lead to the facts of the case; and so that all the material facts should depend upon memory, which may be convenient or treacherous, as found in the examination aforesaid; and that these defendants combined, confederated and conspired together in the formation and incorporation of said company, and in the proceedings attending the same, both previously and subsequently thereto, and, with Whipple and Dickerson, knowingly to aid and abet them, Whipple and Dickerson, in the scheme of fraud and conspiracy set on foot by Whipple and Dickerson at the shops of Pettet and Dripps in Washington City, in September, 1869, touching and in and about the patent property covered by and chargeable with the trust, and pending the suit of Ambler vs. Whipple and

Dickerson, in the Supreme Court of the District of Columbia, with full knowledge and timely notice *of the trust*, of the breach *of the trust* by Whipple and Dickerson, and of said suit and all things in relation thereto. It appears that Whipple, the chief conspirator, was to be covered by defendants, Blunt and Insley; Blunt and Insley acting for themselves, and as the agents of Whipple and Dickerson, as will appear by the copy of the affidavit made by Stilson Hutchins, and filed in the Circuit Court of the United States for the Eastern District of Missouri, April 16, 1875, in a cause then and there pending, in which the Manufacturer's Bank of Chicago was plaintiff and Stilson Hutchins defendant, upon suit at law brought to enforce the payment of one of the notes given by him for stock in the Missouri Liquid Fuel and Illuminating Company, see copy of said affidavit, Ambler's Exhibit, No. 30 of this record, page 83.

47.

That all the sales made of said property, or any part thereof, to Blunt and Insley, or either of them, by Whipple & Dickerson, or either of them, were made as from one confederate or conspirator to another, and were intended so to be; that they were, and each of them was, made with the intent to swindle and defraud Ambler of his rights in the patent and trust property pretended to be conveyed, and were for the purpose of alienating the franchise and trust property of Ambler, of complicating the title thereto, and to seize and appropriate the proceeds and assets, derived and to be derived therefrom, to their own use and to the use of their confederates and co-conspirators, and which facts were well known to all these defendants when they united and combined with Whipple & Dickerson in the furtherance

of this scheme of fraud and conspiracy against Ambler, as herein set forth, and that they, and each and every of them, did become in law and fact active participators and conspirators therein and parties thereto, from its inception, abinitio, at the shops of Pettitt & Dripps, in Washington City, as aforesaid, and so continued therein.

48.

That the defendants have taken no steps whatever, legal or otherwise, to recover said property, the proceeds thereof, or to stay Whipple & Dickerson in pursuit and furtherance of the fraud and waste of the trust, the sequestration of the assets derived therefrom, lost in reckless speculation in railway and construction companies, in building and operating railroads; nor have they taken any step or proceeding to arrest this outrageous swindle and scheme of fraud against your orator, or otherwise to protect his rights, or to release themselves from the consequences of their own acts; but, to the contrary, they have covered and shielded said Whipple in every possible manner. They have pleaded immunity for him and for themselves, and still persist in so doing. They have become and are now the custodians of his secrets which they have held and do still hold and conceal from your orator. They assert, set up and maintain his theory of defense, as made in the former case and adversely to the decision of the Supreme Court, as rendered in said former case—Ambler vs. Whipple & Dickerson, in favor of Ambler.

49.

The fraudulent acts complained of form one united scheme of fraud and conspiracy, first set on foot by Whipple & Dickerson, at the shops in Washington, in September, 1869, and which in Blunt and Insley soon

thereafter united for the purpose of furthering the same, and, for the same purpose and to enlarge the fraud and combination, the other defendants in this bill united with them, Whipple & Dickerson and Blunt and Insley, to form the Missouri Company; and for this purpose; and to further the scheme, the statute laws of the State of Missouri were fraudulently used, and said company became thereby an integral part of the conspiracy, and the corporators are, therefore, lawfully held and legally bound to the same extent as Whipple & Dickerson are held and bound by the Supreme Court's decree in the case of Ambler vs. Whipple & Dickerson.

"And your orator submits the premises considered, the issue of a lawful enforcement of contribution which can in any way interfere with or delay the rights and equities of your orator in this behalf."

50.

That T. S. Dickerson was not made a party to the suit of Ambler vs. Whipple & Dickerson, by reason of his having stolen and pirated the invention of your orator, but because he had knowingly connected himself with Whipple and aided him in his frauds on Ambler in violation of the trust in said cause set forth, and your orator submits to your Honors that the issue he desires and claims the lawful right to submit in this cause is precisely the same as the issue made and tried in the former case of Ambler vs. Whipple & Dickerson, as against Dickerson in that case; that is, have these defendants, so far, knowingly connected themselves with Whipple, or with Whipple & Dickerson, and aided him, or them, in promoting and furthering the frauds on Ambler that they cannot resist Ambler's right to one-half of the patents Nos. 95,665 and 102,662, and of the

profits made and to be made out of them as damages in this cause of action.

51.

That at the time of these transactions, say in December, 1871, Whipple & Dickerson had no commercial standing as reliable business men; bnt, on the contrary, they were known to be bankrupt, worthless and utterly irresponsible and without any credit whatever. And these facts were known to the defendants; that on this account more than ordinary caution was due from these defendants in dealing with Whipple & Dickerson in relation to inventions and patent and trust property, and the right, title and interest of so large and important a character as to involve the payment of so large a sum of money, as set out, and the formation of an incorporate company, with a capital stock of $500,009; that the irresponsibility of Whipple & Dickerson, as aforesaid well known to the defendants, made it more imperative upon the defendants to provide for the faithful execution of the trust, and the protection of the share of your orator in the fund derived through them from the trust property, or the proceeds thereof, and to secure the same from improper appropriation, and use for the benefit of your orator.

52.

Relates to the influence and strength, co-operation and assistance of the defendants in aiding and abetting Whipple and Dickerson in the large sales made by them and in the illustrations and exhibitions of the invention by Whipple and Dickerson, in St. Louis and elsewhere, and these sales made of the property covered and chargeable with the trust, in the interest of the conspiracy, on

all covered by the patents, which the Supreme Court declared to be trust property to the extent of one-half.

53.

Charges that the defendants in no way attempted to stop this wholesale swindle to the extent of millions of dollars, or to bring back the proceeds thereof, or in any way to protect the rights of Ambler therein, in breach of the trust and pending the suit in relation thereto.

54.

Relates to the application for a rehearing of the cause of Ambler v. Whipple and Dickerson (20 Wallace) and tenders an exhibit of the opinion rendered by Mr. Justice Miller in that behalf. (Page 92 of Record.)

55.

That defendants are chargeable with notice of said decisions, and are held and legally bound in law and fact thereby.

56.

That Ambler has prosecuted his said suit at great labor and expense continuously from January 4, 1870, to the present time, and is now prosecuting the same, that he has expended therein a sum of money exceeding $50,000; that he has been impoverished and nearly ruined whilst these fraudulent trustees, and those who have fraudulently co-operated with them have received large sums of money and vast profits amounting to millions of dollars. And among the wrongdoers your orator charges the defendants, and during the prosecution of his rights

the defendants have been in possession of his property, and are now.

57.

Relates to the mandate of this court, and the decree of the court below entered thereon.

58.

Shows that Whipple abandoned the partnership upon the threshold of success, and fraudulently took in Dickerson and formed a new partnership between them, adverse and hostile to the partnership of Whipple and Ambler, which facts were well-known to the defendants.

59.

That Whipple made no sales in the name of Whipple and Ambler, or on partnership account of Whipple and Ambler, or on account of the trust. He did not hold out the partnership of Whipple and Ambler, but ignored the same, and absolutely abandoned it. But he did hold out the fraudulently formed partnership of Whipple and Dickerson and made all sales thereunder, and these defendants dealt with said Whipple and Dickerson accordingly and "knowingly;" and your orator submits to your Honors that Whipple can assert, set up and maintain no right in law or equity under said partnership of Whipple and Ambler; and no right can be set up by his confederates for him or for themselves thereunder. That these defendants have no right whatever to any benefit or protection from the partnership of Whipple and Ambler, which they have never acknowledged and have always ignored, and against which, and the rights of Ambler they have been for years in defiant hostility.

That all the dealings of these defendants with Whipple and Dickerson have been hostile and adverse to the partnership of Whipple and Ambler, and any effort to invoke the same for their protection, or to shield themselves thereunder from the consequences of their collusion and confederation with Whipple and Dickerson against your orator, and after suit is brought against them for the wrong and injury done is a violation for every principle of equity and justice—an assumption of pretended rights and claims unwarranted by the facts—unsustained by authority of law, and in direct conflict with the decision of the Supreme Court in the case of Ambler v. Whipple and Dickerson, as to Dickerson, in this cause specially submitted as the foundation in law upon which this suit is brought; and, further, because the facts show that there is no lawful enforcement of contribution, in this behalf, between said Whipple and either of the defendants.

60.

That Whipple did not act for Whipple and Ambler, or for their use and benefit, or for the benefit of Ambler or his partner, or the beneficiary of the trust, but he did act adversely thereto in all these fraudulent and scandulous transactions, and with the intent to deceive, swindle and defraud your orator of his rights in the partnership and the trust, and for the use and benefit of Whipple and Dickerson, their associates, confederates and co-conspirators, and, in which they have been illegally and fraudulently aided and abetted knowingly by these defendants, and each and every one of them to the great damage of your orator.

61.

That Whipple did not have the complete *jus desponendi*, nor was he *sui juris* in all respects, or in any respect

whatever, since the commencement of the suit of Ambler v. Whipple and Dickerson, January 4, 1870, and previously thereto in and about these transactions, nor did he ever pretend so to act; and, it cannot be legally pretended for him, for the benefit of these defendants, or for any other purpose, and certainly not for the purpose of defending him and his associates in swindling and defrauding Ambler of his rights in the partnership and trust property.

62.

That Whipple did not have the "full, absolute, complete and exclusive power and authority to sell and convey" the property covered by and chargeable with the trust, unlawfully and fraudulently, by virtue of the agreement of May 25, 1869, as was shamefully pretended in the court below, unless Whipple, in the face of the Supreme Court, can be purged of all fraud and intent to defraud your orator in the transactions and dealings with the partnership and trust property, and unless the very existence of the records and facts in relation thereto in said cause can be stricken and obliterated from the Supreme Court of the District of Columbia, and all notice and knowledge thereof forever destroyed.

That it was presented in a former suit in the lower court, (Eastern District of Missouri,) as a defense in an action of Ambler v. Choteau et al., in Equity No 710 of said court; that Whipple had the right, "the full, absolute and exclusive power and authority under said agreement of May 25, 1869," to do the very things he did do, and that would have been derelict in his duty to Ambler if he had not done the very things he did do; or, in the language of Mr. Shepley, counsel for defendants in the court below in said former suit 714: "Ambler had put it into Whipple's hands for the very purpose of doing

the very thing that Whipple did, and he would have been derelict in his duty, under the agreement, if he had not made these sales;" and that, too, precisely in the manner and form and for the very purpose he did make them. And your orator submits to your Honors, that if this is not *suggestio falsi* it would be impossible to determine what constitutes false suggestion in pleadings; and it was further contended that Ambler "assented to the passing of the title to Whipple's vendus, and, therefore, the rights of Ambler, when sold, were extinguished." And further, that Ambler was willing to relinquish his rights in the property for the share of the proceeds which he had confidence in Whipple to believe he would pay him, as appears by the brief Glover and Shepley, solicitors for the defendants filed in this cause. (See record, pages 96 to 110 inclusive.)

Said suit was dismissed without prejudice for want of parties, and this suit was instituted *de nova*, and this defense was made in the face of the suit of Ambler vs. Whipple & Dickerson, then and now pending, and in the face of the decision of this court, in said cause, establishing the trust, the breach of the trust, the fraud and conspiracy of Whipple & Dickerson, and determining the rights of Ambler in the patents or trust property, and the profits arising, and to arise therefrom, against Whipple as direct trustee, and against Dickerson (without his consent and against his will, as he was not a party to the original contract of Whipple and Ambler) as a constructive trustee, or a trustee by operation of law, and as a conspirator with Whipple, because he had knowingly aided and abetted Whipple in his (Whipple's) fraud on Ambler, as the defendants have, and each and every of them has done, to the great damage and injury of your orator.

That all of Whipple's acts in relation to the trust property are now, and have been, the subject of litigation since January 4, 1879, and of all of which it is charged, and cannot be denied, that these defendants, and each and every of them, had full knowledge and due, lawful and timely notice, and of all things in relation thereto.

63.

Relates to the surrender of letters patent Nos, 95,665 and 102,662, after they had been successfully impeached in the Patent Office, and the obtaining of reissues thereon Nos. 5326 and 5327; and it is charged that this was done in furtherance of the scheme to complicate the title and rights of Ambler, and with the knowledge, aid and assistance of the defendants; and in fraud of the rights of Ambler and pending the suit of Ambler vs. Whipple & Dickerson. (See exhibits on page 87 to 92.)

64

Shows that the invention set forth in said letters patent Nos. 95,665 and 102,662 has been made, used, vended and used in the Eastern District of Missouri by the defendants, and publications made thereof in fraud of the rights of Ambler; and the great val[illegible]of the invention was sent forth from time to time in the St. Louis Times, and all done in the interest and for the benefit of the defendants, all of whom aided and assisted therein; and by the means of which large sales were made in the interest of the conspirators.

65.

Relates to notices given by Ambler from time to time to the defendants, of his legal rights and equitable title to, and interest in the property, and of the suit

pending, and of the interference in the Patent Office, and he endeavored to place before the defendants the liability they incurred to your orator in dealing with Whipple and his associates, but without avail.

66.

That large stock companies have been formed and incorporated by Whipple & Dickerson and their associates in carrying out the scheme, and millions of dollars in money, property, stocks and assets have been realized by them; and, among the said associates, your orator charges the defendants to be.

67.

That defendant Blunt fraudulently became the vendor, agent, partner, confederate and co-conspirator with said Whipple, pending said suit of Ambler vs. Whipple & Dickerson, with a full knowledge of all the facts, and aided and abetted him in said scheme since on or about March 28, 1870, and so continued up to and after this bill was brought.

68.

Sets out the sales made to Blunt and Insley. (See same record, p. 27.)

69.

Contains the sales to Blunt and Insley, and are as brief in the record as can well be made, see page 28.

70.

A reference to the preceding paragraph.

71.

Refers to the close relationship between Whipple and Blunt, and Blunt's knowledge of the scheme of

Whipple and Dickerson to defraud Ambler of his rights in the invention and trust property.

71½.

Refers to the fact that the conveyances are not with Ambler, but with the defendants, and claims leave to produce copies, and prays originals.

72.

That Whipple and associates have squandered and wasted the assets of the trust in wild and reckless speculation, instead of sharing with your orator, as he was in duty bound to do, and these defendants have in no way tried to stop him or bring back the property, but they have been and still are the custodians of his secrets, and sharers in the assets of the fraudulently sold trust and patent property; and now, after having sold millions of dollars of the trust, and appropriated the same to his own use, he is now reported bankrupt and perfectly worthless, and these facts apply to his confederate and tool Dickerson; and, with these bad men and wrongdoers, these fraudulent trustees, conspirators and confederates, your orator finds these defendants associated and linked by their own acts, as shown by the public records, with a full knowledge of the same, and so continue therein, without taking legal or any steps to relieve themselves of the relations they bear to them and your orator. That they have pretended to treat this fraud and swindle as though they had no part nor lot whatever therein. They have ignored your orator's just rights and made themselves the trustees of your orator, after Whipple had committed to their knowledge the fraudulent breach of the trust reposed in him, in good faith by your orator, the joint property of said Whipple and your orator, as shown by records, facts,

and evidences which cannot be questioned or contradicted.

73.

Shows the aggregate of sales made by Whipple and Dickerson and their confederates to be $7,591,067, and which evidence of sales made is presented to show the Court something of the character and extent of the breach of trust and fraud perpetrated upon your orator, and the influence and strength your orator has had to meet in the long, vindictive and acrimonious litigation through which he has passed since January 4, 1870, to the present time. The transcript of said sales is not in the record, but may be produced at the bar at the hearing. That it is believed by your orator that these defendants are bound to your orator to the extent of one-half of all that has come to Whipple's hands, and also to Dickerson's, and one-half of all that is included in the patent, unless they can purge themselves of all knowledge and lawful notice, and participation in these transactions.

74.

That upon the hearing of the Court below of the case of Ambler vs. Whipple and Dickerson, there was published by the conspirators then in Washington 21 columns in a daily paper, which set out only the case made by the defendants. That this was evidently done to influence public opinion against your orator, and to secure large sales of the invention claimed by Whipple and Dickerson, and these papers were extensively circulated throughout the country by Whipple, Dickerson and Blunt, and with the full knowledge of all these defendants.

75.

Shows that the decree of the Chancellor in the Court

below was reversed by the opinion and mandate of the Supreme Court of the United States, November 30th, 1874. That the litigation (at the bringing of this bill) had exhausted over five years of the life of the patent; that titles have been made complicating the title of your orator in a large portion of the United States and territories, including the patent to Whipple and Ambler, the patents to Dickerson and Whipple, and the reissues thereof, and by these means they have greatly injured the value of the invention, and destroyed confidence in the title and safety of *bona fide* purchasers, and necessitated a large number of suits in all parts of the country; and, by such plans, in furtherance of the scheme of fraud and conspiracy, they have greatly retarded and hindered the introduction and sale of the invention under valid patents of your orator. States his damages sustained to the amount of over 4,000,000, and avers that he did not know of these transactions till after they were consumated, and sometime in December, 1871, and during that time he has been in continuous litigation on account thereof.

76.

This paragraph shows that Ambler notified the defendants, and appealed to their consciences and sense of common justice, for some terms of settlement upon which your orator's rights and share of the trust property should be protected, but without avail, while the defendants have had constant intercourse, association and fellowship with Whipple and Dickerson and their confederates in and about the premises, secretly and clandestinly and fraudulently, and with a full knowledge of all the facts. That your orator has pressed upon these defendants a meeting with your orator from time to time, but without avail, all of which

acts and doings are contrary to equity and good conscience, and tend to ~~to~~ the manifest wrong, injustice and oppression of your orator.

77.

That Ambler has received no part of the large sales made, and the shares of your orator remain due and unpaid. That the defendants have laid out and invested the same to their own use and behoof, in their own names and in the names of their associates and friends, in violation of the trust and rights of your orator, and without his knowledge or consent, by way of accumulation for their own purposes, and in a manner not directed ~~muted~~ by the trust.

78.

That these defendants have or had in their possession or under their control, books, papers, publications, notices, circulars, and know the contents thereof, including documents, letters, telegrams, writings, memoranda, contracts and agreements, whence it will appear that they were purchasers with notice, and which will show when produced that they had full, lawful and timely notice of the trust, the fraudulent breach of trust, and of your orator's equitable title in the franchise conveyed and of the suit aforesaid.

79.

Shows that during the years of the litigation, it would not be possible to trace all the fraudulent acts of the conspirators, and each of its individual members, now comprising a large number of persons in all parts of the United States, and your orator does not pretend to unmask and lay bare all the unlawful acts and doings of these defendants in the scheme of fraud and conspiracy aforesaid, and in which they have all joined and main-

tained a common interest and design in furtherance of the same ; and meet and correspond with each other in relation thereto, secretly, clandestinely and fraudulently and for the purpose of a united and common defence against the rights and equities of your orator in any cause of action he may have against them; and to this end they are driven and compelled to hold the chief conspirator, Whipple, purged of all fraud in dealing with the partnership and trust property aforesaid, and to contend that he had a right to do the very things he did do by virtue of his contracts with your orator, and this defence is made in the face of the decision of the Supreme Court of the United States, which declares the transaction of Whipple and Dickerson in relation to these patents and to the partnership and trust property to be a scheme of fraud against your orator, and said decision is law unto this Court.

80.

That it has been throughout this long litigation touching these proceedings the open boast of these defendants that they had the money and influence to defeat your orator in any suit he might bring to vindicate or establish his rights, and they have used and are still using the proceeds and assets of this partnership and trust property, seized and appropriated by these defendants as confederates with Whipple and Dickerson to unlawfully defend themselves and their co-conspirators against the established and adjudicated rights of your orator; that your orator has for years been contending for these rights in the Patent Office and in the courts, and during all this time he has been met by Whipple, and Dickerson, Blunt and Insley, and their confederates, including the defendants in this bill, with the proceeds and assets and profits derived from the

partnership and trust property aforesaid in the hands of these defendants, and he is now meeting the same in this way and for the same purpose, namely, the protection and defence of these defendants and co-conspirators with Whipple and Dickerson in the scheme of fraud aforesaid, and by the use of the money and proceeds derived therefrom, and upon which state of facts your orator hereinafter prays an injunction to protect the same from unlawful use, &c.

81.

Charges full knowledge and due and timely notice of all the acts and transactions set forth from:

First. The 24 and 25 days of May, 1869.

Second. The issue of patent to Whipple and Ambler, No. 92,687, July 13, 1869.

Third. The experiments of Whipple and Ambler at the shops of Pettet and Dripps in Washington, in August, 1869.

Fourth. The seizure of the apparatus by Whipple at said shops in September, 1869.

Fifth. The formation of the scheme of fraud rnd conspiracy at said shops, September 4, 1869, between Whipple and Dickerson,, and the fraudulent partnership then growiug out of the same.

Sixth. The furtherance of the same by Whipple and Dickerson by the surreptitious and fraudulent application of T. S. Dickerson for letters patent, as the pretended sole inventor, on the invention of Ambler aided and abetted by Whipple, the partner, agent and trustee of Ambler, September 16, 1869.

Seventh. The fraudulent assignment of Dickerson to Whipple, Sept. 24th, 1869.

Eighth. The scheme to buy out the rights of Ambler, through the pretended agency of Warrick Martin in the

month of September, 1869, and the failure of the same by Ambler's refusing to sign the papers prepared for him by the conspirators.

Ninth. The experiments of Whipple and Dickerson with the Whipple and Ambler machines at the shops of Pettit and Dripps, and also at the shops of Wm. T. Duval in Georgetown, D. C.

Tenth. The issue of letters patent No. 95,665, October 12, 1869, to Dickerson and Whipple as the sole assignees of T. S. Dickerson.

Eleventh. The sales and transfers in detail made by Whipple and by Whipple and Dickerson previously to January 4, 1870, as the sama appears by the public records in the Patent Office, exhibited in the court below, and will be produced at the bar at the hearing, Nos. 10 and 11.

Twelfth. The suit of Ambler vs. Whipple and Dickerson brought January 4, 1870, and of all the exhibits, facts, proofs and pleadings therein set forth, and of all things in relation thereto.

Thirteenth. The surreptitious and fraudulent application of Dickerson & Whipple for other letters patent on the invention of Ambler, and the issue of the patent No. 102,662, May 3, 1870, thereon, pending the suit aforesaid, in relation to the subject-matter thereof.

Fourteenth. The connection of defendant Blunt with the scheme of fraud and conspiracy, in or about the month of March, 1870, in Washington city.

Fifteenth. The connection of Merritt H. Insley in the same scheme, in or about the month of April, 1870, also in Washington, both of whom, it is charged, were fully informed by Whipple & Dickerson of the scheme when

they connected themselves therewith, and they have been throughout the whole of these transactions, and they are still connected therein. They have been the direct promoters and aiders of the conspiracy in all its details and ramifications, from the commencement thereof by them to the present time, and are still; and in all of which they have directly participated and shared with the chief conspirators, Whipple & Dickerson, and do still so participate and share with them, and all of which was well known to the other defendants named in the bill when they entered this conspiracy.

Sixteenth. The formation of each of the incorporated companies named and set out in the bill: 1. The Keystone Liquid Company, of Pennsylvania. 2. The Liquid Fuel Company, of New Jersey. 3. The Missouri Liquid Fuel and Illuminating Company. 4. The Illinois Liquid Fuel and Illuminating Company. 5. The National Gas and Iron Company, of Illinois. 6. The Chicago Railway Construction Company; and, 7. The purchase of the charter of the Chicago & Illinois River Railroad Company, which was purchased and constructed by the conspiritors, for and in the interest of the conspiracy, from the funds and assets derived from and growing out of the partnership and trust property, and by the unlawful use of the rightful dues and equities of your orator and the assets and profits derived therefrom.

Seventeenth. The interference in the Patent Office, and the three trials, and the decisions thereon in favor of your orator, 1st, February 3, 1872; 2d, May 9, 1882; 3d, August 21, 1872, and awarding priority of invention to Ambler over both the patents to Dickerson and Whipple.

Eighteenth. The issue to Ambler thereon of patent No. 131,240, September 10, 1872, as the first, sole and original inventor of the invention therein described.

Nineteenth. Of the *ex parte* and fraudulent surrender by Dickerson & Whipple, *pendente lite* said suit of letters patent Nos. 95,665 and 102,662, and the application of reissues thereon, March 14, 1873; and,

Twentieth. The issue of reissued letters patent Nos. 5236 and 5237, March 18, 1873.

82.

Shows the precarious and doubtful character of Whipple, known to the defendants, and that they did nothing to protect your orator's rights, or prevent the chief conspirator from alienating and sequestrating the property which had come into his hands, and as growing out of the trust and partnership property aforesaid; and from going into bankruptcy, fraudulently; pending the suit; by a fraudulent use of the bankrupt laws in Illinois to defeat the execution of the judgment and decrees your orator had obtained against him in the suit aforesaid, and by reason thereof, and of the premises herein fully and at large set forth, your orator prays the intervention of this court, and for damages as alleged and prayed for in the bill.

83.

That your orator sets forth and alleges, as his damage in this cause of action, the full amount of every sale, and any and all sales, grants, licenses and transfers made by Whipple & Dickerson, and by Blunt and Insley, and by all of these defendants, and by each and every member of said scheme of fraud and conspiracy, whenever and wherever made, from the commencement of the same and during the same to the present time; and of

every sale, and of all sales inclusive, made for value, making a sum in the aggregate, as shown by the public records and by other evidences thereof, to the full extent of eight millions of dollars of which your orator has been cheated, defrauded and damaged to the extent of one-half, with the interest thereon from the date of each transaction; and further, to the extent of $500,000 for time, labor, trouble and costs of the litigation and controversy in and about the partnership and trust property aforesaid, and the costs of this suit.

Prayer.

1. Prays for damages, as aforesaid, to the extent of one-half of the sales made.

2. That the defendants be declared co-trustees with Whipple & Dickerson.

3. For discovery.

4. For restraint and ~~personal~~ provisional injunction, and from intermeddling, etc.

5. That the defendants deliver up the property covered by the trust, and the proceeds in their hands, etc.

6. That an account be taken, with half-yearly rests, of all sales made and all proceeds in the hands of the defendants.

8. That the defendants set forth a schedule and description of all papers, documents, contracts, etc., in their hands, etc.

9. Prays damages for the wrong, and injury done, etc.

10. Prays answer in the usual form and substance, and for the proper writs, commanding them to appear, etc., under penalty, and for such other and further relief, in

the premises, as the nature and circumstances may require, and for general relief.

The bill is sworn to in the usual form.

Brief and Argument.

FIRST.

That the theory of the plaintiff's case is founded upon the fact of the collusion, confederation and conspiracy of Rodney M. Whipple and Thomas S. Dickerson, in forming a scheme of fraud to deprive Ambler of his rights, privileges and immunities, secured to him by the Constitution and laws of the United States.

SECOND.

By the destruction of the firm of Whipple and Ambler.

THIRD.

By the fraudulent formation of the firm of Whipple & Dickerson, adversely and hostile to the firm of Whipple & Ambler.

FOURTH.

The fraudulent application for letters patent of the United States on the invention of Ambler, and by surreptitiously and fraudulently obtaining letters patent thereon in the interest and for the benefit of Whipple & Dickerson and their associates, to the exclusion of Ambler, and hostile to his rights.

FIFTH.

The fraudulent association of a large number of individuals with them in the scheme of fraud and conspiracy, and the use and sale of the invention of Ambler, piratically covered by the patents obtained by Whipple & Dickerson.

SIXTH.

The formation of large stock and incorporated companies throughout the United States, for the promotion of which the color of State statutes were to be used, and were used in the furtherance of the scheme, and the appropriation of the proceeds thereof, in the interest and for the use and benefit of the conspirators, first formed by Whipple & Dickerson, at the shops of Pettit & Dripps, in Washington, September 4, 1869; and joined thereafter by James G. Blunt, in March, 1870, and by Merritt H. Insley, in April of the same year; and by the other defendants thereafter, as fully and at large set forth in the bill.

This scheme of fraud and conspiracy was carried out by a large number of overt acts, also fully and at large set out in the bill. That the conspiracy was formed, September 4, 1869, and continued to the final decision of the Supreme Court, in the case of Ambler vs. Whipple & Dickerson, reported in 20 Wallace; and the fraudulent sales and overt acts were commenced in September, 1869, and continued to February, 1875, and possibly still later; and these sales and overt acts show the amounts that have come to Whipple & Dickerson's hands, and are included in both the patents to Whipple & Dickerson, and these sales and receipts that have come to the hands of Whipple & Dickerson, and are included in the patents Nos. 95,665 and 102,662—amount in the aggregate to between $7,000,000 and $8,000,000.

By reference to the opinion of the Supreme Court in the case of Ambler vs. Whipple & Dickerson, pages 64 to and including 69, the court will find the following decision, (p. 69):

"For all that has come to Whipple's hands, for all that is included in the patent to him and Dickerson, he is, under the terms of the sixth article of the agreement, a trustee for Ambler to the extent of one-half, and must be so charged and held to account in this proceeding.

"As to Dickerson, while he is not a trustee under that article, we are of the opinion that he has, so far, knowingly connected himself with and aided in the fraud on Ambler, that he cannot resist Ambler's right to an undivided half of both the patents to Dickerson & Whipple, and of the profits made, or to be made, out of them.

"What rights or remedies he may have against Whipple, we do not decide.

"The result of these views is, that the decree of the Supreme Court of the District must be reversed; that a decree must be entered in that court, declaring Whipple & Dickerson to hold in trust for the benefit of Ambler to the extent of one-half of the two patents issued to them, mentioned in the pleadings as 95,665 and 102,662; that an accounting be had as to the profits realized by them, or either of them, from the use or sale, or otherwise arising from said patents, and for such other and further proceedings as may be in conformity to this opinion."

This opinion presents for consideration and authoritatively decides the fact that Whipple was held as direct trustee, and Dickerson as a constructive trustee, or a trustee by operation of law, because he had knowingly connected himself with Whipple, the direct trustee, in his frauds on Ambler. Upon this theory of the original bill in said cause it is difficult for the appellant to see why the same theory should not prevail in this cause, the defendants one and all having united himself and connected themselves with the direct and adjudicated trustee in the frauds on Ambler, in and about the same subject matter, viz., the partnership and trust property covered by the fraudulently obtained patents, and the

decree of this Court in favor of Ambler to the extent of one-half. In what way they differ from the status fixed by this Court for Thomas S. Dickerson it is not possible to determine. They one and all knowingly joined Whipple and Dickerson in the commission of overt acts of fraud by dealing with them in relation to this very property which this Court declare to be, and to have been, held in trust to the extent of one-half for Ambler; and how they can escape this legal Nemisses fastened upon them by the Supreme Court the appellant is not able to discover.

It is true the solicitor for the defendants finds a hole for escape in denying the fact that no trust did or could attach to the patents, and on the proceeds in the hands of Whipple only; and this dictum of the solicitor is boldly given in the face of the decision of the Supreme Court quoted, which gives to Ambler an undivided one-half of both the patents, as well as one-half of the proceeds and profits derived and to be derived therefrom. Then again he seeks escape by an attempt to purge and purify the soiled Whipple from all blame, and declares that Ambler put him there and *kept* him there to do the very things that Whipple did. An absurdity too absurd not to be treated with the contempt due to a corrupt and unlawful defence, and this too is made in the face of a litigation commenced against him January 4th 1869, about this very matter, and of the decision of this Court, which treats the transactions of Whipple as a scheme of fraud by which Ambler was to be and was deprived of his rights and benefits resulting from success in their joint experiments; as the Court say, "Ambler was excluded from all control." And in the assignment in trust to Whipple (p. 42 record) Ambler clearly defines

the object of the same to be, to enable Whipple the better to carry out the object and intention of the articles of co-partnership made between Whipple and Ambler on the preceding day, and for the use and purposes aforesaid; and these uses and purposes are clearly defined in the articles of agreement of May 24, 1869; and they *do not* embrace the fraudulent transactions of Whipple, or of Whipple and Dickerson and these defendants; but pledge and bind said Whipple to act in good faith, and share and share alike with Ambler. In reality the solicitor sees clearly that he must purify and purge Whipple to save his more wealthy clients, and thus he is compelled to take issue with the decision of the Supreme Court, and all the rights and equities of the bill. But he says nothing as to Dickerson or his connection therewith, till he arrives at the point where it appears necessary to abandon his theory as to Whipple, when he brings Dickerson forward and clothes him and Whipple with the parchment of the Government in form of letters patent surreptiously and fraudulently obtained, but successfully impeached by Ambler before he makes his somersault in that direction. From beginning to end he brings forward false, contradictory and immaterial issues, and slashes about from one thing to another, until he leaves the case and his defence in this muddled condition, relying evidently upon some mysterious combination of immaterial matter to secure a decree without a hearing, and by misleading and by blinding the Court to the real issues and true character of the bill, and the law and authorities bearing thereon.

In argument upon the demurrer, in order that a more complete answer may be made to the different defenses set up, and that your Honors may have before you as nearly as possible all that has been said and done in the

case, we deem it proper to present first the argument of Mr. Shepley, counsel for defendants, made upon demurrur, in April, 1876, together with an answer thereto, before replying more fully to the defenses set up by the defendants.

ARGUMENT OF MR. SHEPLEY.

Mr. Shepley said:

"Now, what sort of a case does that present, upon the face of the bill? It is shown, first by the agreement, apart from any assignment of the half, that Whipple and Ambler owned each a half of the patent—owned each a half of any patents that might thereafter be made by Ambler; but in that agreement, as far as other parties were concerned, except as between themselves, all the dealings were to be done by Whipple himself. He was put by that original agreement in the position that he was the party to convey, he was the party to contract. Everybody was to make arrangements with him. Ambler had no voice in the matter, and could have by no possibility a right to any proceeds until those proceeds which came into Whpple's hands had been subjected to the payment of expenses and had been accounted for by Whipple to Ambler, as being the part rightfully coming to Ambler under the provisions of the agreement. That would have been the state of things, apart from any assignment of Ambler's half of the patent. Upon the provisions of the original agreement itself, the parties dealing in relation to this patent would only have to deal with Whipple and would only have to account to Whipple.

"Suppose there was a royalty, either for a district or for the use of the invention, all that the party would have to do, if they bought out the district, was to pay

the money to Whipple, and that was a full satisfaction and discharge, as far as they were concerned, in relation to this matter, for anything purchased and held by Whipple under this agreement. If there were any royalties they were not authorized to pay to Ambler. Under the terms of this agreement they were prohibited from doing so. Whipple was the only person who could receive it. But that is not all. If it had stopped there, upon the terms of the original agreement Ambler had no rights here to come in and call to account other parties as long as Whipple stood in the way and was *sui juris* in all respects; but on the very next day what does Ambler do? Why, he conveys all his right to the undivided half of the patent to Whipple himself, *I agree under trust*, but the whole title of the patent had passed from Ambler into Whipple, so that nobody was entitled to treat with anybody except Whipple. But not only had he the trust for the whole, but he had an *absolute* title to the whole. All he had to do was to account for what he should receive to Ambler, under the terms of the original agreement.

"Now, suppose it were all that is said, what of it? As far as these individual defendants are concerned, what of it? Suppose they had known that Whipple and Dickerson were conspiring to cheat Ambler, and to take the patent for themselves. All this was before—no, not before the patents were issued, but all they were doing was treating with Whipple, who was put there by Ambler. If Ambler had a right to the patents issued in the name of Whipple and Dickerson, all that Ambler had to do was to file his bill, as he did, against Whipple and Dickerson, in the proper court, and to obtain a decree for them to account to him for everything they got, and if they accounted to him as receiving $70,000

upon a contract made here with the Liquid Fuel and Illuminating Company, if he thought that was collusive or if he thought the amount that was there stated was put in for the purpose of defrauding him out of his rights, all he had to do was to allege and prove that thing, and then he would have an accounting with Whipple and Dickerson for what they ought to have recovered or received on account of the transfer made by them to the Missouri Liquid Fuel and Illuminating Company. So that he is fully protected. If there had been no suit, as alleged, against Whipple and Dickerson on the part of Ambler, he was fully protected by the very terms of his bill, by the facts therein stated; and all he had to do was to call upon Whipple and Dickerson to account to him; but as far as these parties are concerned, as alleged upon the very face of the bill, they had a perfect right to deal with Whipple. *Ambler had put it into Whipple's hands, for the* VERY PURPOSE OF DOING THE VERY THING THAT WHIPPLE DID (*suggestio falsi*); and he would have been derelect in his duty under the agreement if he had not made these sales. If he had made these sales collusively, if he had undertaken to sell to the Missouri Liquid Fuel and Illuminating Company for $75,000, when, in reality, he had sold it for $5,000, that is a matter which he could obtain his satisfaction for, if he could prove such a thing; but as far as dealing with anybody in relation to the subject-matter of this agreement, or in relation to any of these patents, he had deliberately put it out of his power to interfere. He had made Whipple his agent in every respect, and not only that, but he had conveyed to Whipple all his interest in that patent; the assignment was the next day after the agreement, therefore he had not only made an agreement by which he had put into Whipple's power

and into his trust his whole interest, for Whipple to manage as he thought proper, but he had enforced it by the next day conveying all his interest to Whipple, so that Whipple had the absolute interest, so far as the record shows, in the patent itself. Now, in addition to that, Mr. Ambler brought his suit against Whipple and Dickerson. He went on and got his decree, after going up to the Supreme Court of the United States, and a decree compelling Whipple and Dickerson to account to him for all these matters, and here he has his judgment against Whipple and Dickerson, covering this very thing, according to his averments here, and all he has to do is to go on and proceed under the mandate of the Supreme Court of the United States, in the District of Columbia, and have that referred to a master, and if he has any rights, to recover upon the proceedings by Whipple and Dickerson, or either of them, in regard to any sale made to the Missouri Liquid Fuel and Illuminating Company, there is the forum which he has gone before and invoked for the protection of his rights, and he has the very judgment which will enable him to protect them.

"The fact whether Dickerson and Whipple are solvent or insolvent has nothing to do with this matter. We have traded with the very *persons* (Dickerson and Whipple were *not* placed there by Ambler, and the assumption *is suggestio falsi*) that he had placed there to protect his interest. It is for him to determine whether they are solvent or insolvent, whether they are worthy or unworthy of credit; but as long as upon the face of his own agreement, and upon the records of the Patent Office, the person who has this patent is solely and only authorized to contract in relation thereto; they are protected if they contract with that person.

"This matter really seems to me too plain to admit of much argument. It is a matter which strikes at the whole of the bill. Of course, if they cannot maintain this they cannot maintain the bill against any of the parties. But there are matters which affect the other parties to the suit, even if they could, that is, first, the question whether, upon any averments of this bill, these individual defendants, being simply directors of the corporation, are proper parties to this bill.

"It is alleged that this agreement was made with this firm, a corporation of the State of Missouri legally constituted. This is a bill, simply and only, not upon the idea of an infringement of patent, or interference with the rights of the patentee, but it is is to have a trust declared, to have an accounting made, and the person who alone is responsible here, upon the averments of the bill, as far as this corporation is concerned, is not the patentee (corporation probably intended), they have no interest here, but simply and only the corporation itself, which has made the contract. It is alleged that they are directors, simply and only, and Blunt and Insley are really brought in here and made parties solely and only as being directors of this company, though it is said they have made a contract; but they seem to stand here, though in the narrative part of the bill it is said they made the original transaction with Whipple and Dickerson, and afterwards conveyed an interest to the Missouri Liquid Fuel and Illuminating Company; it is probable that they stand here only in the light of being co-directors with the other parties, individual defendants here.

"Now, though there are many averments here in relation to fraudulent conduct, there is nothing said here and no fact set up, which shows any fraudulent conduct

upon the part of the corporation or any of its defendants. It is said that they knew of these different suits and of the claim made by Ambler, but at the same time they knew of this ageement; they knew of this assignment. The mere question of what arrangements Ambler might have with Whipple and Dickerson, as in relation to these two patents taken out in the name of Whipple and Dickerson could not affect them, by possibility, with any fraudulent conduct of Whipple and Dickerson as between themselves and Ambler. They were rightfully the owners of the patent, at the time they traded, by a decision of the Patent Office, and by the issue of the patent; and, being so, the mere averment of Ambler as to whether he had any trust against them on account of the issue of these patents, or whether it was under these trusts, is a matter, of course, which cannot affect them, as being a fraud upon Ambler's rights.

"At the time they traded with Whipple and Dickerson, these patents stood in the name of Whipple and Dickerson upon the records of the Patent Office, and it was sufficient for them that it stood so. There being no question of infringement here, it is sufficient for them, when they state so, that they are entitled to contract with the parties in whom the United States had vested the title to these patents. If anything occurred afterwards by which Whipple and Dickerson became trustees to Ambler, they were the parties to settle for this up to the time when the United States interfered and vested the title of these patents in Ambler; then, for the first time, they stood in a position where Mr. Ambler could assert his rights as against them, not as trustees (*suggestio falsi*) but in another way. The bill is defective for want of proper parties. Whipple and Dickerson are necessary parties to this litigation, if it should go on."

ANSWER TO MR. SHEPLEY'S ARGUMENT.

This argument is based upon two theories, and upon these alone the whole defense stands or falls. If either be true, the plaintiff's case remains in question; if both are false, his claims are virtually admitted.

The first is that these defendants bought of Whipple and Ambler and are therefore protected by the original agreement of partnership between Whipple and Ambler.

The second is that they bought of Whipple and Dickerson the property which *rightfully* belonged to Whipple and Dickerson.

These two theories are *necessarily* antagonistic, and if one is true the other is necessarily untrue, and an argument in support of one is certainly in opposition to the other. Mr. Shepley claims that both are true; but since this is impossible, we are driven to the conclusion that both are essentially false. A brief analysis of his argument will show this to be the correct and only conclusion that can possibly be arrived at.

Mr. Shepley says: "Suppose there was a royalty, either for a district or for the use of the invention; all that the party would have to do, if they bought out the district, was to pay the money to Whipple, and that was a full satisfaction and discharge so far as they were concerned. * * * If there were any royalties they were not authorized to pay to Ambler. Under the terms of this agreement they were prohibited from doing so."

This would all have been true "under the terms of this agreement." But these sales were made in December, 1871, and the Supreme Court of the United States have decided that Whipple did nothing "under the terms of this agreement," subsequent to August, 1869;

that his sales of the patents, and all other acts relating thereto, were in opposition to, and in violation of "the terms of this agreement." Now how it was possible for these defendants to buy "under the terms of this agreement," which Whipple not only failed to sell them "under the terms of this agreement," but which he did sell in direct violation of "the terms of this agreement," we would ask the learned counsel to explain.

Mr. Shepley says: "If it had stopped there, (that is, if there had been no assignment in trust) upon the terms of the original agreement, Ambler had no rights here to come in and call to account other parties as long as Whipple stood in the way and was *sui juris* in all respects."

This is but another assumption that all things done by Whipple in relation to the patents were done "upon the terms of the original agreement," and that for this reason, and because he "was *sui juris* in all respects," Ambler could not come in here and call these parties to account for dealing with him. This is clearly an admission, and it is a well settled rule of law, that if Whipple had not acted "upon the terms of the original agreement," and had not been "*sui juris* in all respects," Ambler could very properly have come in here and called to account these parties.

The opinion of the Supreme Court of the United States heretofore cited, decided that Whipple did nothing "under the terms of this agreement," and that he was not "*sui juris*" in all respects or in any respect. And this view is adopted by Mr. Justice Dillon also in this case, for he says more than once in this opinion sustaining the demurrers, that Whipple, conceiving this to be a very valuable patent, immediately set to work by

a confederacy to swindle Ambler out of it. He says the very patents sold to these defendants were pirated from Ambler, and yet Mr. Shepley claims that a sale of this property by Whipple which he himself had stolen, was legal, and he was "*sui juris* in all respects." This reasoning is clearly false, and the plaintiff's claim that these defendants should account to him, remains virtually undisputed.

But at this point in his argument, Mr. Shepley admits that it did not stop here—that is, at the agreement of partnership; but that after this, on the following day, Ambler conveyed his title to the undivided half to Whipple in trust. Then immediately after this admission of the fiduciary and sacred relations of partnership and trust existing between Whipple and Ambler, Mr. Shepley adds, that "all he (Whipple) had to do was to account for what he should receive to Ambler, under the terms of the original agreement."

Accordingly; Mr. Whipple was at liberty to ignore every other requirement of the agreement of partnership, and every duty imposed on him by the assignment in trust, and all the trust relations. In fact, according to this view he had a perfect right to violate every article of the agreement of partnership and of the trust assignment, except the single article requiring him to account. But he not only violated all the relations which it is assumed he had a right to violate, but also his only remaining duty admitted by the defense: *He never accounted.* Another most flagrant abuse both of the partnership and the trust was that he sold the property belonging to the firm of Whipple & Ambler in the name and for the benefit of the firm of Whipple & Dickerson. But Mr. Shepley is either compelled to

claim that he had a right to do *this*, or else to confess the fraud charged upon the defendants, for he admits and it is also a matter of record, that they bought the property of Whipple & Ambler of the firm of Whipple & Dickerson, with due notice and a full knowledge of Ambler's claims and of all his rights under the "original agreement" and the trust assignment, and pending the suits of Ambler to enforce and maintain these rights. In this violation of the trust and partnership by Whipple, the defendants are so closely united with him that it is impossible to separate them.' So it is clear to Mr. Shepley that if one is guilty, all are guilty, and if one is innocent, all are innocent. And for this reason he is driven to say that *Whipple is innocent*. But the Supreme Court of the United States have decided that Whipple is guilty. Then of course the defendants are equally guilty.

Mr. Shepley says:

"Suppose they (the defendants) had known that Whipple and Dickerson were conspiring to cheat Ambler and to take the patent for themselves. All this was before; no, not before the patents were issued, but, all they were doing, was treating with Whipple, who was put there by Ambler."

Mr. Shepley supposes what the Supreme Court of the United States have decided to be a fact, viz.: that Whipple and Dickerson were conspiring to cheat Ambler, and to take the patent for themselves. Yet he says: "all that they were doing was treating with Whipple," while, as a matter of fact they were treating with Dickerson also for this very property, and from whom the purchase was made, precisely as it was made from Whipple, and from whom they dare not claim the

protection of the original agreement, or any other protection. Even if these defendants were not liable for dealing with Whipple, they certainly would be for dealing with Dickerson, who never, at any time, bore any other relation toward Ambler, except that of a fraudulent trustee, going about the country selling in his own name and for his own benefit, property which these defendants say, they knew at the time they purchased it of Dickerson, that it belonged to Ambler, under the original agreement.

Mr. Shepley says that Whipple was put here by Ambler. This assertion necessarily carries with it the claim that he was put here to do precisely what he did. Then, we have Ambler in the position of sending Whipple here, and to all other parts of the country, for the express purpose of swindling him out of three and a half millions of dollars—a claim so absurd as not to need even a denial. To argue that a trustee has a right to conspire with a third party to cheat the *cestui qui trust*, and that others may join this conspiracy, with a full knowledge of its existence and its objects, without themselves becoming liable, is to argue for the overthrow of one of the most sacred relations existing between man and man; and in opposition to a principle of law, more firmly established, perhaps, and more jealously guarded than any other known to jurisprudence; and in violation of every authoritative decision on this subject of the highest Court of this and every other country; and in direct opposition to the principle laid down by the Supreme Court of the United States in this very case.

Mr. Shepley says, and he reiterates it time and again, that all these defendants did was to deal with Whipple, who was put here by Ambler. We have already shown

that this cannot be true, since it is a matter of public record that they, at the same time and place and in the same manner, dealt with Dickerson concerning the same property, as the partner and confederate of Whipple.

We now come to a fact which is folly for the defense to deny, and which is so patent that the Court took occasion to suggest it from the bench, that is, by referring to Blunt and Insley in the case. Yet after this, Mr. Shepley's *impartiality* toward *all* of his clients would not permit him to deny it. Mr. Justice Dillon, addressing Mr. Shepley from the bench, says, "You say they (Whipple and Dickerson) sold Blunt and Insley these for $70,000." Judge Dillon further suggests, "Blunt and Insley sold to this corporation for $250,000?" and then asks "what interest had Ambler, Whipple, or anybody in that sale?"

No, Mr. Shepley is not willing to save the majority of defendants by lodging the fraud in Blunt and Insley, for they are his clients also, and he obviously considers it his duty to protect them if possible. Yet since it is now clear to him and to everybody else that there is evidently a fraudulent link established between the original wrong-doers, Whipple and Dickerson, and all these defendants, he is driven to adopt a most remarkable means of escape, which is certainly a dernier resort. And now he boldly asserts that it makes no difference even to "suppose they (the defendants) had known that Whipple and Dickerson were conspiring to cheat Ambler and to take the patent for themselves, * * * all they were doing was treating with Whipple, who was put there by Ambler."

We challenge the learned counsel to find, in the history of the jurisprudence of the civilized world, a single

authority in support of such a doctrine—the doctrine that a trustee may form a conspiracy to cheat *cestui qui trust*—to literally take from him the trust property—to appropriate it to themselves—the conspirators—and after this conspiracy is fully formed, and the trust property stolen, that other parties may purchase this property of these conspirators, with a full knowledge of all these facts, without themselves incurring any liability to the *cestui qui trust.*

Mr. Shepley argues to show Ambler what he should have done for his protection. But since he did precisely what the learned counsel recommends, and since the Supreme Court of the United States have decided that it was the very thing to have done, it is easy enough now that the egg stands on end, and the discovery made, that Mr. Shepley comes and informs us of the way to do it, in fact, that what Ambler did was right. But we differ with Mr. Shepley in his attempt to show that Ambler has exhausted his remedies, for the reason, as he claims, that "they (the defendants) had a perfect right to deal with Whipple; Ambler had put it into Whipple's hands for the very purpose of doing the very thing that Whipple did. And he would have been derelict in his duty under the agreement if he had not made these sales."

To say that these defendants "had a perfect right to deal with Whipple," without adding Dickerson, also, is a very clear admission that they had no right to deawith the latter. But the decision of the Supreme Court of the United States makes Whipple and Dickerson in separable trustees for Ambler; makes both equally liable for the transactions of either; and, since both joined in the sales, it is impossible for these defendants to escape, even admitting, as we do not, all that is claimed. Mr.

Shepley then says, "Ambler had put it into Whipple's hands for the very purpose of doing the very thing that Whipple did."

And what was it that Whipple did?

He formed a conspiracy with Dickerson for the purpose of cheating Ambler and taking the patent for themselves. They took the patent to themselves, and called it the property of Whipple & Dickerson. They expelled Ambler from all participation in his own experiments, in the sales of his own property, and in the proceeds arising therefrom. They sold to these defendants this stolen property, in the name and for the benefit of Whipple and Dickerson, and succeeded in defrauding Ambler of the vast sum of three and a half millions of dollars. And yet, according to Mr. Shepley's argument, this was simply carrying out "*the very purpose*" which Ambler had in view in the agreement between himself and Whipple, of May 24th, and in the assignment of trust, of May 25th, 1869. Mr. Shepley says Whipple "would have been derelict in his duty if he had not made these sales."

In this Mr. Shepley simply says that Whipple did perfectly right in perpetrating what the Supreme Court of the United States have decided to be one of the most gigantic schemes of fraud upon record.

Mr. Shepley next asserts that, "as long as upon the face of his own agreement, and upon the records of the Patent Office, the person who has this patent is solely and only authorized to contract in relation thereto; they are protected if they contract with that person."

Upon this theory Whipple is to-day fully authorized, and the only person authorized to contract in relation to these patents, and all persons dealing with him in relation thereto are protected by this agreement, whether such dealings be in accordance with its terms or in direct

violation of them. For this agreement is not more violated now than it had been then; the acts which destroy his rights to invoke this agreement now had been committed then, and the decisions in the Patent Office and in the Supreme Court of the United States, which now make it unlawful for him to repeat those acts, revert back to their commission, and affect Whipple and all others connected with him at the time, or thereafter precisely the same as if the decisions had been rendered on the day those acts were committed. Mr. Shepley ignores the fact that Whipple had denounced Ambler as his partner—had violated every requirement of this agreement—did not make these sales under it, or even pretend to do so—and did not so much as make them in the name of the partnership formed by it. He also ignores the fact that there were records in the United States Patent Office at the time these sales were made, showing the antagonistic relations existing between Whipple and Ambler, notifying these defendants and the whole world that Whipple was powerless to act under this agreement, even if he had desired to. This was in substance a *lis pendens* filed in May, 1870, more than eighteen months before these sales were made. He also closes his eyes to the fact that the controversy then pending in the United States Patent Office, and the suit pending in the Supreme Court of the District of Columbia, were legal notices to all persons who purchased these patents did so at their peril.

Mr. Shepley says:

"It is alleged that this agreement was made with this firm, a corporation of the State of Missouri legally constituted.

He says, if there is any liability, it does not affect the (corporators) but only the corporation, and adds:

They (the incorporators) have no interest here, but simply and only the corporation itself, which has made the contract. It is alleged that they are directors, simply and only, "and Blunt and Insley are really brought in here and made parties, solely and only as being directors of this company."

This is not a true representation of the allegations in the bill. It is not alleged that this corporation was legally constituted, but that these corporators made a fraudulent and unlawful use of the corporate laws of the State of Missouri, to enable them to extend and perpetuate this fraud. We show in our bill and exhibits the truth of this allegation, which clearly fixes the liability in the individual corporators, as Mr. Shepley cannot successfully deny. Neither is it alleged that "they are directors, simply and only," nor "that Blunt and Insley are brought in here and made parties, solely and only as being directors of this corporation." It is true they are liable as directors and as the incorporators of a fraudulent corporation; but they are also liable as we prove, as the exhibits show, and as the defendants admit, as the confederates of Whipple and Dickerson, both before and after these sales—as both vendors and vendees in this very transaction—Blunt, as the acceptor of valuable interests in these patents, *without consideration;* and, in the language of Judge Dillon, Blunt and Insley are the "*stool pigeons*" of Whipple throughout almost the entire history of this scheme of fraud and corruption.

Mr. Shepley says: "There is no fact set up which shows any fraudulent conduct upon the part of the corporation or any of the defendants."

It is difficult to see how *any one* who has ever read the plaintiff's bill could seriously maintain such a proposi-

tion. While the bill abounds both in general and specific charges of fraud against the corporation and the individual incorporators, the two following paragraphs, Nos. 23 and 24 of the original bill, are certainly sufficient to convince everyone either that Mr. Shepley has never read the bill and has no knowledge of what it does charge, or that he himself does not seriously believe what he claims for the defendants. These paragraphs are as follows:

"23. That Thomas S. Dickerson and Rodney M. Whipple entered upon a contract or agreement to convey all improvements which they might make on said patents Nos. 95,665 and 102,662. December 23, 1871, for the nominal consideration of $5 and other considerations therefor, to defendant, Missouri Liquid Fuel and Illuminating Company, upon certain conditions named in the agreement. A copy of this agreement will be produced at the bar at the hearing. Your orator avers that at the time of this agreement, December 23, 1871, the Missouri Liquid Fuel and Illuminating Company had full knowledge of the trust aforesaid and of the equitable title and legal rights of your orator in the subject-matter of the contract aforesaid, and made said contract in fraud of your orator's rights, and without providing any means of protection for your orator's share of the profits to be derived therefrom, and to your orator's damage and injury. See exhibit following, No 12½."

"24. That on or about the 18th day of December, 1871, defendants, James G. Blunt and Merritt H. Insley, sold and conveyed to defendant, 'Missouri Liquid Fuel and Illuminating Company,' the franchise and interest of your orator, with a full knowledge of the trust and of the fraud and *breach of the trust* aforesaid and of your

orator's equitable title and legal rights therein, and with lawful notice thereof, for the sum of $250,000, as your orator has been informed and believes, and defendant, Missouri Liquid Fuel and Illuminating Company, made said purchase and paid said large sum of money with a full knowledge of the trust and of the fraud and *breach of trust* aforesaid, and with timely and *lawful notice* of your orator's legal rights and equitable title therein, WITHOUT ANY EFFORT WHATEVER ON THE PART OF SAID COMPANY TO PROTECT YOUR ORATOR'S SHARE OF THE PURCHASE MONEY, as they were bound in law and in equity and good conscience to do in this behalf, and without the knowledge or consent of your orator and to your orator's damage and injury; and that said Blunt and Insley thereupon became members, stockholders, trustees and directors in and of said company, becoming in fact both vendors and vendees of the franchise and trust property aforesaid, in dealing with and becoming directors in said Missouri Liquid Fuel and Illuminating Company, as will appear by a copy of the articles of association hereto annexed and prayed to be made a part hereof, marked Ambler's EXHIBIT No. 13."

These paragraphs speak for themselves, and we submit them without comment, deeming either sufficient to satisfy even Mr. Shepley and everyone else that the plaintiff's bill does set up facts which show fraud in the defendants.

Mr. Shepley says of the defendants, that "they knew of these different suits and of the claim made by Ambler, but at the same time they knew of this agreement; they knew of this assignment."

In this sweeping admission, Mr. Shepley actually admits all that Ambler claims. He admits that the defendants *knew* of the contest then pending in the Patent

Office, and of the suits in the courts of the United States—of the notices contained in the contest and the suits; that both this "agreement" and the "assignment" had been violated in every particular by Whipple, and that he was powerless to act under them; that the property purchased by these defendants had previously been stolen from Ambler by the very men of whom they purchased; of the liability of all persons so purchasing, upon the judgments thereafter to be rendered in these suits; and of all other rights which Ambler therein asserted, each and everyone of which the Supreme Court of the United States afterwards awarded. We would ask Mr. Shepley to explain how it is possible for this agreement and the assignment, for the violation of which the Supreme Court of the United States hold Whipple and Dickerson liable, can operate to protect and shield from liability all others who violate them? In other words, how can any instrument which fixes the liability of two conspirators for its violation, operate to shield from liability other members of the same conspiracy?

At this point in his argument, Mr. Shepley makes a most remarkable change in his theory of defense. Heretofore, his whole argument has been to prove that these defendants are innocent because they bought Ambler's property of his partner and trustee, who sold it to them precisely in accordance with the partnership and trust. Perhaps the counsel concludes to make this radical change in his theory after reflecting that there is record testimony on file in this court which proves the falsity of everything he has so far claimed; or, perhaps, he now sees that he has simply made a laborous but vain effort to overthrow the unanimous opinion of the nine judges

of the Supreme Court of the United States rendered in this very case. However this may be, he now says, in direct conflict with all that he has heretofore said, that,

"They (Whipple and Dickerson) were *rightfully* the owners of the patents at the time they traded, by a decision of the Patent Office and by the issue of the patents."

If this be true, why has the learned counsel made so many admissions that it is not true, or in other words that it was Whipple and Ambler's property? And why does he invoke the partnership of Whipple and Ambler to protect the defendants in dealing with Whipple and Dickerson concerning their own property? He may as consistently invoke the partnership of Wm. Barr & Co., dry goods merchants, or of any other firm we might suggest. Then if this is true that Whipple and Dickerson were *rightfully* the owners of the patent, any one who pirates a patent from the inventor, and perjures himself to get it through the Patent Office, is "*rightfully* the owner of it." According to this view, the thief who steals my horse and sells it before I catch him is at the time of such sale *rightfully* the owner of it. Although Mr. Shepley says "they were rightfully the owners," both the Commissioner of Patents and the Supreme Court of the United States say they were *not* rightfully the owners. However, since this is merely a difference of opinion between Mr. Shepley on one side, and the Commissioner of Patents and all the nine judges of the Supreme Court of the United States on the other, we are willing that the defendants should have all the consolation they are able to get out of it, Mr. Shepley's main argument has been to show that the defendants are not liable for purchasing Ambler's property of the firm of Whipple and Dickerson, because they had a

right to buy it of the firm of Whipple & Ambler; and finally, after a score of admissions that it was Ambler's property, they disclaim any liability, on the ground that it was not his. We are unable to see how this inconsistency strengthens the defense.

Mr. Shepley says: "If anything occurred afterwards by which Whipple and Dickerson became trustees to Ambler, they were the parties to settle for this."

But unfortunately for these defendants, something occurred before these sales, as well as afterwards, by which they became his trustees. Whipple was his trustees by the agreement and the assignment dated nearly two years previous to these sales, and Whipple and Dickerson were both his fraudulent trustees more than a year before these sales were made, by reason of their joint violation of this agreement and trust assignment. So that both were his trustees at the very time when Mr. Shepley virtually admits that such a relation between them and the complainant would be fatal to both of his theories; and the Supreme Court of the United States have so decided.

To point out and refute all the fallacies and false theories contained in this brief, it would be necessary to traverse almost every sentence contained in it. But this is neither desirable nor important for our present purpose; and while we deny in general every material averment it contains, we will specially notice the most important propositions only. The first statement, embodying the basis of the defense, is this:

"During all the time of the pendency of the suit of Ambler against Whipple and Dickerson, in the Supreme Court of the District of Columbia, down to the final decree in favor of Ambler, rendered on the 2d of February, 1875, the defendant corporation and its stockhold-

ers had full right to purchase the interest in the two patents, as fully as if Whipple and Dickerson owned the entire interest therein, or as if Ambler had no legal or equitable interest therein."

This astonishing proposition carries upon its face its own refutation. Unqualified as it is, it clearly means that the defendants had a full right to purchase of the persons of whom they purchased, at the time they did purchase, in the manner and form of said purchase, and with a knowledge of all the facts and circumstances relating to the property purchased. In fact, the statement is simply this, that the defendants had a perfect right to purchase property covered by a specific trust, of a conspiracy including the original trustee and others, fomed for the express purpose of defrauding the *cestui qui trust* out of said trust property, and with full knowledge and notice. 1st, that said property was so held in trust; 2d, that the conspiracy to cheat and defraud the *cestui qui trust* had been formed; 3d, that the conspirators had pirated, stolen and taken possession of the trust property; 4th, that the purchase money paid for this property did not move to the trust; 5th, that the *cestui qui trust* was at the time of said purchase prosecuting his suits in the United States Patent Office and in the Supreme Court of the United States for the recovery of this trust property and the profits derived and to be derived therefrom; 6th, of all the claims, charges, notices, exhibits, etc., contained in the pleadings in said suits. These facts are alleged in the pleadings, and at least for the purpose of argument upon demurrer must be admitted.

We claim that a purchase by the defendants of such property, under such circumstances, was in itself a fraud. That a discovery of all the facts concerning such pur-

chase, transfer and use of the trust property, will show the defendants so far implicated with Whipple and Dickerson in the fraud on Ambler as to render them members of the conspiracy charged. That on account of their participation in this fraud and conspiracy, they are jointly and severally liable for all that Ambler has lost thereby in the same manner, and to the same extent that Whipple and Dickerson are liable. Upon all these question the law is settled and conclusive.

By far the greater part of defendant's brief is devoted to an effort to show that plaintiff's right to bring this bill is barred by articles of co-partnership existing be tween him and Whipple. It is claimed that the partnership of Whipple & Ambler was originally unlimited and unqualified, and that it still so exists; that all that Whipple did was by authority of and in accordance with this partnership; that these defendants purchased of him in this capacity, and are protected thereby. In all these claims they are compelled to ignore the trust. They repeat again and again the sentence in the 6th article of plaintiff's bill, "which partnership still and now exists in full force and effect." Their interpretation of this sentence wholly disregards the fact that the instrument itself clearly provides for nothing more than a qualified and limited partnership, and that Ambler's averment could not possibly enlarge its scope and meaning, how ever absurd it is to suppose that he intended to do so. They also disregard the amendment in which this sentence is entirely disposed of, and close their eyes to all the facts in the case, and to all law operating upon those facts by which the defendants are stopped from invoking its protection, whatever might have been its original meaning, or Ambler's meaning, or the present status of the partnership. As a matter of fact, if there ever was

unlimited and unqualified partnership between Whipple and Ambler, it so existed but for a single day. The "memorandum of agreement" was made and executed May 24, 1869, and the assignment in trust the day after. By this assignment the "memorandum of agreement" was merged into a trust. It was thereafter inseparable from the trust, and has since existed only for the purs pose of showing the rights, interests and duties of the parties thereto, and how the trust was to be executed. The Supreme Court of the United States treat this arrangement between Whipple and Ambler precisely as Ambler does, for they say, page 24 of printed record, "We are therefore of opinion that the case shows nothing which deprives Ambler of his rights under the original contract with Whipple;" and on page 22, they say, "It is to be observed that neither party prays for a dissolution of the partnership. Indeed, the bill and cross-bill, and the answers to both, proceed upon principles which do not recognize the partnership as existing." It is true, as a matter of fact, that plaintiff did in that suit pray for a dissolution of partnership, in words as follows: "That said letters of co-partnership of May 24th, 1869, made and executed by and between Rodney M. Whipple and Augustin I. Ambler aforesaid, be closed, determined, annulled, set aside, vacated, and made of nought, for and on account of the breaches and violations on the part of said Whipple of the covenants therein set forth, and for and on account of the collusion, conspiracy, fraud, and injury done as aforesaid." See par. 28 of bill in that case.

Still, it is sufficient that the Supreme Ceurt, although over-looking this prayer, treated the partnership as dissolved by the acts of the parties thereto, leaving nothing

but the trusts remaining. From all this, it is clear that defendants are laboring to sustain a false theory of the case; and it would seem that the Court here was mistaken in delivering the opinion on demurrer to this bill, April 8th, 1876, in the observation: "The Supreme Court, in deciding that, although they did not say anything about it, must have held that a bill between partners for an account would lie pending a partnership — for they say the partnership is not dissolved."

Notwithstanding all this, defendants still insist that it was and still is an unlimited and unqualified partnership, and then proceed to argue that for this reason they are at liberty to assist one of its members to cheat and defraud the other; to purchase of another and fraudulent firm what they know belongs to this partnership; to make the purchase in the name and for the benefit of this fraudlent firm; to pay them the money; and all this in the face of various suits pending against this fraudulent firm by the defrauded partner, for the recovery of this very property.

But suppose for a moment that defendant's theory of the partnership were correct, what does it signify? Simply, that Whipple could act in accordance with its terms, and not otherwise; and that Ambler was bound only to such acts of Whipple as were so performed; and that third persons, with notice of the partnership, could claim its protection only so far as they dealt fairly with its members. The simple fact that these defendants had no dealings whatever with the partnership of Whipple and Ambler, estops them from claiming protection thereunder, and ought to be a bar to all controversy upon this subject. Yet defendants insist upon it, in the absence of a better defence. But suppose, as we

tsay, that it did exist and still exists as defendants claim does it give Whipple authority to break off from the partnership, for the purpose of cheating his partner, Ambler, out of his share of the property and the proceeds."

"The partner who breaks off partnership with an unfair design, disengages his co-partners from all engagements to him, but does not disengage himself from his obligations to them."

Does it authorize him to collude with Dickerson for this purpose and to make all sales in the name and for he benefit of the firm of Whipple & Dickerson?

"All partnership transactions must be in the name and style of the firm."

One of the partners cannot make a valid partnership engagement except on partnership account.

Does it authorise these defendants to purchase the property of Whipple & Ambler of the firm of Whipple & Dickerson, with notice of the partnership of Whipple & Ambler and of its extent?

"Every man is presumed to know the extent of the partnership with whose members he deals."

"The authority (of one partner to bind the others) can be exercised only in cases falling within the ordinary business and transactions of the firm, where the other party has no knowledge or notice that the partner is acting in violation of his duties and obligations to the firm, or for the purposes disapproved of by the firm, or in fraud of the rights thereof. *Story on Part.*, 110.

"Every contract in the name of the firm, in order to bind the partnership, must not only be within the scope of the business of the partnership, but it must be made with a party who has no knowledge or notice that the partner is acting in violation of his obligations and

duties to the firm, or for purposes disapproved of by the firm, or in fraud of the firm, for every such contract made with such knowledge or notice will be void as to the firm." 3 *Hill R.*, 279.

"When the business of the partnership is defined, known or declared, and the company do not appear to the world in any other light than the one exhibited, one of the partners cannot make a valid partnership engagement, except on partnership account."

"Where there are but two persons in the firm, and they dissent from each other, it would seem a just result that it amounts to a temporary suspension of the right and authority of each to carry on or manage the partnership business, or dispose of the partnership property, in respect to all persons having notice of such disagreement." *Story on Part.*, 123.

Does it authorize these defendants to purchase this property pending the litigation concerning it, and at the same time operate to release them from all liability established by such litigation? "Under this new doctrine of *pendente lite*," it may be so; but under the old doctrine it is otherwise.

"A purchase made of property actually in litigation *pendente lite* for a valuable consideration, and without any express or implied notice in point of fact, affects the purchaser in the same manner as if he had such notice: and he will accordingly be bound by the judgment or decree in the suit." 2 *Fonbl. Eq.*, b. 2, ch. 6, sec. 8, note *n*. 3 *Atk.*, 392. 11 *Ves.*, 194. 2 *Atk.*, 175. 1 *Johns.* Ch. R., 566.

"He who purchases during the pendency of a suit, is held bound by the decree that may be made against the person from whom he derives title." * * *

If a person "pays money in opposition to it (a decree) he will be compelled to pay it again." 1 *Vern R.*, 57. *Sugden on Vendors*, ch. 17, sec. 1–2.

"It is a well settled rule that the Court is not bound to take notice of any interest acquired in the subject-matter of the suit pending the dispute." 1 *Peters*, 310

Does it authorize the defendants to enter into a conspiracy, formed for the sole purpose of defrauding this partner? That this conspiracy was formed is settled. That these defendants united with it, is charged, and facts set out which, if true, prove this charge. But upon demurrer the facts must be admitted.

"It makes no difference at what time anyone enters into the conspiracy, he becomes a party to every act which had been previoulsy done by any of the others." *Bright* (*Pa.*), 143.

"In civil actions, the damage and not the conspiracy is the gist of the action." 2 *Hall* (*N. Y.*), 277. 7 *Hill*, 104.

"If any damage is sustained in consequence of the conspiracy, an action lies, though the act, which was designed be not done." *Patten v. Gurney*, 17 *Mass.*, 186.

"What would be the legal effect of an actual combination to resist a patent, is a question of much importance." Woodworth v. Sherman, 3 Story, 172

"An individual patentee (or the owner of any other property) may successfully resist an individual when it may be much more difficult to resist the combined force of a great number of persons, united to oppose his patent." 173.

"In many cases it is lawful for individuals to do what cannot lawfully be done by a combination." 173.

"It would seem that a combination of a number of persons to resist a patent approaches very near, if it does not actually reach, a criminal conspiracy." 173.

"Nor is it necessary to prove that the conspiracy originated with the defendants; or that they met during the process of its concoction; for every person entering into a conspiracy or common design, already formed, is deemed in law a party to all acts done by any of the other parties, before or afterwards, in furtherance of the common design." *Greenleaf on Evid., vol.* 3, 93; *also, vol.* 1, 111.

But defendants see that it will not do to ignore the trust entirely, as was done in the argument on the demurrer to original bill. Hence it becomes necessary to claim that the sales were all made in performance of it. On page 17 of brief they say: "The papers show that they (the sales) were made in direct performance of the trust. * * * * * There was then no breach of trust in Whipple selling, or in Blunt and Insley buying, or in their paying the purchase money to Whipple, nor in Whipple receiving the purchase money. If, after Whipple has received the property, he had refused to sell, that would have been a breach of trust."

And again, on page 16:

"Now, we contend that the effect of the articles of co-partnership and the effect of the deed of May 25, 1869, is, that Whipple could sell and pass title free of all claims of Ambler, *and that no trust did or could attach on the property sold*, but did attach only upon the proceeds in the hands of Whipple."

While all these claims are necessary to the defense, how absurd they appear when uttered in the face of the

following passages from the decision of the Supreme Court of the United States, and the decree rendered in obedience to the mandate of said court, pages 26 and 27 of printed record. Mr. Justice Miller, in rendering the opinion, says:

"Whipple, in violation of his trust to Ambler, and in fraud of his rights, deliberately entered upon a scheme by which Ambler was to be deprived of the benefits resulting from success in their joint experiments. That in pursuit of this scheme he called in Dickerson, who, without having invented anything, and in a remarkably short space of time, procurred letters patent to issue to himself and Whipple, which embraced the results of Ambler's discoveries and experiments, whether they embraced anything else or not. * * * * *

"The result of these views is that the decree of the Supreme Court of the District must be reversed; that a decree must be entered in that court declaring Whipple and Dickerson to hold in trust for the benefit of Ambler to the extent of one-half *the two patents issued to them, mentioned in the pleadings as* 95,665 *and* 102,662; that an account be had as to the profits realized by them, or either of them, from the use or sale, or otherwise arising from said patents, and for such other and further proceedings as may be in conformity to this opinion."

In accordance with the opinion of the Supreme Court the Supreme Court of the District ordered, adjudged and decreed that the said Rodney M. Whipple and Thomas S. Dickerson did receive and do now hold, in trust for the benefit of the complainant, Augustin I. Ambler, *one-half of the two patents issued to them and described in the pleadings as numbers* 95,665 *and* 102,662 *and all the rights*

franchises, benefits, privileges, sales and receipts arising therefrom or to arise therefrom.

We are content to submit that all this shows that the sales and all other acts of Whipple were in violation of the trust; that a trust did attach to the property itself, and not to "the proceeds in the hands of Whipple" only. If Whipple had refused to sell, that might have been a breach of trust, but it was certainly a far more serious breach of trust for him to sell in the way he did. Defendants say there was no breach of trust in Whipple selling or in Blunt or Insley buying and paying the purchase money to Whipple. But they do not and cannot deny that there is a very strong presumption of fraud in the sale, not by Whipple only, but by Whipple and Dickerson; not to Blunt and Insley only, but to them only on the face of the transfers and in point of fact to all the other defendants; and this presumption is made conclusive for all the present purposes, at least, by the fact that defendants claim to have purchased of Blunt and Insley what the latter bought of Whipple and Dickerson, when in fact they only took title through Blunt and Insley and paid the money over to Whipple. This has been sworn to by one of the defendant. See Exhibits 20 and 21. This is further evidenced by the fact that all of these transactions took place on the same day.

Defendants' brief claims that Ambler *kept* Whipple before the world as his partner, which he would not have done if he had considered the patents valuable. As to the first point, Ambler sought an injunction to restrain Whipple from acting, and obtained it. His suits against Whipple were also notice to him and to all the world that Ambler did not indorse his acts, and that whomsoever dealt with him did it at their peril. As to the

patents being of no value, this is both immaterial and untrue. A discovery of certain facts and interviews that have occurred between certain of the defendants and the representatives of the plaintiff, since the filing of this bill, December 9, 1875, will show that defendants still regard the patents as valuable as when they contracted to pay $250,000 for them.

Defendants say there is no fraud shown on the part of defendants, or any of them. It is easier to say this than to do what the law requires in such cases, viz.: upon demurrer, to put in a plea to such charges, "accompanied with an answer fortifying the plea, and specially denying the fraud and combination, and the facts upon which the charges are founded." *Story Eq. Pl.*, § 441, note 6. *Daniells Ch.*, 543. In reply to this we would simply call your honor's attention to paragraphs 15, 20, 21, 22, 24, 27, 35, 39, 40, 41, 42, 44, 45, 49, 50, 54, of the bill, and paragraphs 18, 20, 23, 24, 25, 27, 30, 31, of the amended bill.

On page 19 of brief defendants say: "The titles to inventions are bestowed by the United States and remain where the United States have placed them, except when changed by a decree of a Court or conveyance of the parties. Until that time comes, the title remains where the United States has placed it, and any one can contract with such persons."

A title to a patent obtained through fraud is subject to the same laws and equities as the title to any other franchise or property obtained in the same manner. An assignment, with notice to the assignee, under such a title is in all cases subject to those laws and equities, and the assignee in such cases is certainly bound by the decree in a case pending at the time of such assignment

for the recovery of such property by the rightful owner. Ambler's interference suit to set aside the fraudulent title under which defendants hold, was pending in the very office from which defendants obtained title at the time of said purchase; and on February 3, 1872, with n six weeks after they purchased, and long before they ceased to use the property, and before the purchase money was paid over, "Priority of invention is awarded to A. I. Ambler." The decision of the Supreme Court of the United States relates back to the time the bill was filed, January 4, 1870, and vests the title in Ambler from that date.

Defendants say, brief page 24: "The bill still remains multifarious as before in that Whipple and Dickerson are necessary parties to the bill, and that it embraces matters in reference to which this corporation and its stockholders have no interest whatever. "As to Dickerson, the same ground was taken in defendants' argument on demurrer, April, 1876, as may be seen by page 6; but the Court, in its decision, page 101, wholly ignored such a proposition. As to Whipple, he is now a party. As to the corporation and stockholders having no interest whatever in this question, that is the very question to be determined, and we submit that a more extended and specific denial than this is necessary before defendants will be allowed to prove it. And even if this were the proper time and place for such a denial, made in this way, it can avail nothing on demurrer.

The last point which defendants attempt to make is, that, "this court has decided that Whipple is a necessary party, *and that he must be present;* and since there is no way in which his presence can be enforced, under the law, the consequence is that this suit must be dismissed." That the Laws and Constitution of the United States

protect him, etc. If this Court had decided that unless an impossibility be performed, the bill should be dismissed, instead of stultifying itself and the Laws and Constitution of the United States by ordering the plaintiff perform this impossibility, they would have dismissed the bill at once. But in this it seems to us that defendants misrepresent both the Court and the law. The Court did not even decide that Whipple is a necessary party, and certainly nothing was said to the effect "*that he must be present.* The decision was: "That unless it can be alleged here that this partnership is at an end, and that Ambler has succeeded to the rights of the partners," etc., his co-partner must be a party. This Ambler does allege. Besides, the law provides how, if made a party, he may be brought here, in every sense in which his presence is necessary for this litigation. Hence, it follows, that "under the law, the consequence is that this suit must" *not* "be dismissed." They say; "Ambler might find it very convenient to make Whipple come to the State of Missouri and *litigate any unsettled matters arising between them since the decree and accounting in the former suit between them.*" What has occurred between Whipple and Ambler since that decree which requires litigation? That decree decided all controversy between them, and is not alleged that anything has occurred between them since which Ambler desires to litigate here. This case is against the other defendants, and may be brought against one or all of them. As to parties, see rules 22, 47, 48, 54 of Rules for Circuit Court in Equity. "It is not necessary to make all the persons committing a breach of trust parties to a suit instituted for redress of the wrong." Daniell's Ch., 272. The only two cases cited by the defense do not seem to have any bearing whatever upon this case, and why they are cited, we are unable to conjecture.

The manner in which the defendants shift from one theory to another is a most forcible illustration of the weakness of the defense. It clearly shows that there is no ground upon which they are willing to rest. At one time they invoke protection under the partnership; at another, under the trust. Next they abandon both by claiming title under the fraudulent patentees. They treated with Whipple because he was Ambler's partner, but in this connection they invariably fail to explain why they treated with Dickerson. They tell us that Ambler had put Whipple here for the purpose of doing the very things he did, viz.: to cheat and defraud him; but they are silent as to who put Dickerson here. This partnership requires everything to be done in the "name and firm style of *Whipple & Ambler*;" therefore Ambler is bound to all that is done in the name and firm style of *Whipple & Dickerson*. It gives Whipple power to do everything "needful and necessary to carry out the object and intention of this agreement," but according to defendants' view, clearly meant that he should have power to do everything "needful and necessary" *to defeat* "the object and intention of this agreement." "A. I. Ambler hereby ratifies all and singular whatsoever may be *legally* and *lawfully* done," but evidently means that he shall ratify whatsoever is *illegally* and *unlawfully* done. It provides that all patents obtained in this and all other counties, and all benefits made or to be made out of them, shall belong to *Whipple & Ambler*, "one undivided half to each," but this was simply a provision giving to them to *Whipple & Dickerson*. They tell us that Whipple acted "in direct performance of the trust," but fail to explain what the Supreme Court of the United States meant in saying "that Whipple, *in violation of his trust to Ambler, and in fraud of his rights,*

deliberately entered upon a scheme by which Ambler was to be deprived of the benefits resulting from success." They next conclude that it is immaterial whether he violated or faithfully executed the trust, since "no trust did or could attach on the property sold, but only on the proceeds." But here we are again left in doubt as to what was intended by the opinion rendered in obedience to the mandate of the Supreme Court of the United States, which says, "it is ordered, adjudged and decreed that the said Rodney M. Whipple and Thomas S. Dickerson did receive and do now hold in trust for the benefit of the complainant, Augustin I. Ambler, *one-half of the two patents* issued to them, and described in the pleadings as numbers 95,665 and 102,662." At another time they buy neither of Whipple & Ambler nor of Whipple & Dickerson, but of Blunt & Insley; and had nothing to do with the fraudulent trustees, except to pay them the trust money. It is true they bought *pendente lite*, but this is a "new doctrine"—to defendants—and therefore does not affect them. The did not pay over all the purchase money until after the thirteen notices cited on page 5, of the "Abstract of Pleadings," were served upon them; but the payment afterwards was an act of fraud not specially alleged. Therefore it can never be discovered. Although "priority of invention is awarded to A. I. Ambler," February, 3, 1872, they had a right to purchase of the pirates in possession of this invention, with knowledge of these facts, "down to February 2, 1875." Six months ago the bill must be dismissed because Whipple was not made a party; now it must be dismissed because he is made a party. And this is the *argument* (?) upon which defendants rest their case, and ask that plaintiff be ruled out of court and sent to seek his remedy of the defaulting and bankrupt

trustee and conspirator whom they have aided and abetted in defrauding the beneficiary of the trust property.

I.

The first proposition set out in the brief of the solicitors for the defendants is so remarkable an assumption that it is difficult to determine upon what principles it is predicated. If it has any meaning or significance whatever, it must mean that Whipple and Dickerson and these defendants had full authority and legal right to do the very things they did do up to February 2d, 1875, and this *dictum* of the counsel is made in the face of the decision of the Supreme Court of the United States, which says that the acts of Whipple & Dickerson show "A SCHEME OF FRAUD," and that their acts relate backwards to its inception; and the Supreme Court of the District of Columbia, under the mandate of the Supreme Court of the United States, enters its decree in said court that Whipple and Dickerson *did receive and do now hold in trust* SAID PATENTS TO THE EXTENT OF ONE-HALF, FOR THE BENEFIT OF AMBLER, AND THE PROFITS THAT HAVE ARISEN, AND THAT MAY HEREAFTER ARISE THEREFROM. It is further assumed that Whipple and Dickerson had not only a right to sell and these defendants to buy, but that the suit of Ambler v. Whipple and Dickerson was no bar to their transactions. There is no apology for, and no attempt to screen the fraud, combination and conspiracy charged, but, with the most perfect *sang froid* and with the most unwarrantable assumption and barefacedness, the fraud, in the face of the charges and specifications of fraud alleged in the bill, proved by the facts and established by a decision of our highest national tribunal of justice, IS ABSOLUTELY AND POSITIVELY DENIED, and still further, that said suit presented no legal disability on the part of

Whipple and his confederate, Dickerson, to alienate the trust property, or on the part of these defendants to become partners to the alienation by purchase during the controversy. These propositions, as remarkable as they are, are necessary to the theory of the defendants, as indicated by and suggested in the bill (par, 47, p. 67) charging these "defendants with such knowledge and notice of the same as to render them liable and bound in law and equity to the payment of your orator's share and just rights and equities therein, UNLESS THESE DEFENDANTS CAN, AGAINST THE FACTS SUBMITTED, PURGE themselves of all knowledge and lawful notice of the shameful, nefarious and scandalous transactions charged and averred in this bill." But, we could hardly anticipate a temerity which could not only invoke for protection the assignment for which the trust was created—the collusion of the trustee with a confederate to fraudulently breach the trust—the suit pending in relation thereto, the final judgment thereon, but the NOTICES by which the fraud, combination and conspiracy is established and brought home to the defendants. This assumption is beyond comprehension. Such a position repudiates every principle of law relating to the alienation of property pending a litigation and every authority controlling the sale and purchase of trust property, whether in or out of court. In support of this position, of course, no principle of law is laid down, and no authority is cited, and for the best of all reasons, because *no such principle of law or authority can be found.* Dickerson is treated as a *bona fide* joint owner with Whipple, and Whipple is also treated as a *bona fide* joint owner with Dickerson, and they both join to exclude Ambler from all right, legal or equitable, and in which they are knowingly abetted by these defendants, during the pen-

dency of said suit in relation to the property covered by and chargeable with the trust. That suit had for its purpose the restitution of the trust property and the share of the profits derived and to be derived therefrom, and the bill sets out and fully charges the trust, the breach of the trust, the conspiracy of Whipple with Dickerson, the right of the plaintiff to recover and the prayer for relief, and of all of which these defendants admit they had due, timely and lawful notice; and these defendants entered into this conspiracy during the pendency of said suit, collusively and fraudulently, with Whipple and Dickerson to further and extend the same, and the authorities without an exception hold that such invasion *is a fraud* upon the other party, and that a person so invading a litigation is bound by the decree that may be made therein to the same extent as the person from whom he derives title and holds in privity. These defendants are not only guilty of fraud in negotiating and consummating the purchase of the trust property for the State of Missouri, and the invasion of the suit in relation thereto, but by meeting with Whipple at parlor No. 5 of the Southern Hotel, as set forth in the *St. Louis Times*, they entered upon that branch of the conspiracy there concocted, to be carried out and located in St. Louis, and which was fully carried out and located as then and there concocted by the subsequent incorporation of the Missouri Liquid Fuel and Illuminating Company, by a fraudulent use of the corporate laws of the State of Missouri, and the fraudulent purchase of the trust property of the fraudulent trustee and his confederates, which facts are fully set forth in the bill and clearly proved by record which cannot be questioned or contradicted, and are admitted by the demurrers.

II.

That Ambler pursued the proper remedy in the case of Ambler v. Whipple and Dickerson, is finally disposed of by the final decision of the Supreme Court of the United States, in his favor, and that is not a proper subject for discussion here; that decision is final and binding upon this Court, and the assumption of the counsel in relation thereto is ill-timed and out of place.

III.

It appears to us, your Honors, that the real issues here have not been touched by the court or by the defendants; the doctrine of fraud, combination and conspiracy fully charged and set forth, is persistently evaded and passed by as an immaterial issue, or, as an issue not made in the case, when, in point of fact, it is the real issue, and cannot be ignored upon a theory so completely at variance with every principle of law, and every authority *we* can find in the books, that we have been constrained to question the *true* foundation of this theory of defense; and the only solution to which *we* can come is, that these defendants are *too rich* and influential to be sued and defended as persons in the humbler walks of life are sued and defended, namely, in accordance with the laws of the land, the rules of our courts, and the precedents established all over the civilized world. The very fact that this case is now before your Honors shows the extraordinary character of this defense, and the evident POWERS OF resistance to a trial, in the place the law prescribes therefor; and the plaintiff has been compelled to seek and prepare, at great labor and expense, for a hearing and trial of the case in Washington City before your Honors, of which we certainly should *not* complain, but esteem it a high favor, were it not that

the plaintiff has now been fighting this battle, as your Honors are aware since 1870—now over six years; and, we may add, your Honors, the plaintiff has been fighting during all that time his own trustee—his own property and his own money—now amounting, as shown by the public records and other conclusive evidences of fact, to over THREE AND A HALF MILLIONS OF DOLLARS, to say nothing of interest and damages; and yet Judges Dillon and Treat can say, in face of this great wrong, this gigantic conspiracy and swindle, aided and abetted by these defendants, and WITHOUT QUOTING AN AUTHORITY, OR LAYING DOWN A SINGLE PRINCIPLE OF LAW "THAT THE LAW UPON SAID DEMURRER IS WITH THE DEFENDANTS." In the light of the facts, and the charges made in the bill; of the principles of law laid down and the authorities we submit, we have no comments, *at present*, to make upon this unparalled decision of Justices Dillon and Treat of the 8th of April, 1876—Record, p. 101; and NOTHING is said, either by the court here, or by the counsel, as to the *voluntary* acceptance of four States by Blunt.

IV.

It is perfectly proper to regard the AUTHORITATIVE decision of the Supreme Court of the United States in this case as fully, and, to the same extent as the same decision implies to the former case, and this fact is admitted by the defendants in assuming to hold that the defendants in the former suit are necessary parties to this suit, so that counsel and the court here attach to Whipple, his confederacy with Dickerson, his fraudulent character as a trustee, and his relations with the defendants here, a community of interest of privity of design to such an extent as to make him a necessary party to this suit, in and about the same subject matter as that in-

volved in the former suit; and, as he is in privity with them, they must be in privity with him; and, thereby, it must be admitted, the decision of the Supreme Court of the United States is authority to, and binding upon the Court as much as the same decision is binding in the former case; and this position is perfectly tenable whether the *presence* of Whipple is finally secured or not; as this bill is in the nature of a supplemental bill to the former suit, exhibited in this court as against the defendants as PRIVIES to the former suit, by reason of their acquisition of title fraudulently during the pendency of said suit with notice of the defendants therein.

V.

The Supreme Court fixes the fraud between Whipple and Dickerson, and establishes their joint and several liability by reason of the FRAUD and combination between Whipple and Dickerson, and, in the face of this decision, it would certainly be difficult to purge Dickerson and Whipple of fraud. which the learned counsel attempt to do, in order to save their more wealthy clients. By this decision of the Supreme Court is established the principle that third persons colluding and conspiring with a trustee who is acting fraudulently to breach a trust and defraud the beneficiary thereof, is liable to the same extent as the trustee himself, and all that is required of the *cestui qui trust* is to so connect the person so colluding as to show that he has *knowingly* aided and abetted in the fraud. If this decision does not establish this principle, then no principle, *of like application*, can be established by the Supreme Court of the United States, which inferior courts and counsellors at law cannot treat as inopportune, and, with contempt at their option so to do. If this theory of law and practice is to prevail, the law books and the combined learning, re-

search and wisdom of centuries stored therein, and courts of appeal and last resort had better be abandoned as among the relics of a past civilization.

VI.

The application of principles of law and the authorities cited in a case must be applied consistently with, and pertinent to, the charges and allegations made in the bill and the facts and evidences introduced to fortify the same, and not upon hypothetical or assumed issues, foreign to or in evasion of the true gravamen or cause of action made by the bill for the interposition of the Court; and this plain principle of application of the law of the case we have certainly carried out, whilst we are left to conjecture what, and draw upon our imagination for the principles of law and authority upon which the theory of our opponents is predicated.

VII.

It is admitted that the defendants are found in possession of a part of the trust property, namely, a conveyance for a *grant* or title for the State of Missouri, and, that this grant, in the name of Whipple and Dickerson and for their use and benefit, is incorporated in the articles of association of the "Missouri Liquid Fuel and Illuminating Company," (pp. 45–47 of record), in fraud of the rights of the plaintiff and in violation of the trust. The Supreme Court has decided that the transactions of Whipple and Dickerson were fraudulent, *ab initio*, and relate back to the beginning. That a portion of the proceeds of this purchase was paid over to Whipple, but to what extent of course the plaintiff has no means of knowing, and for this he seeks recovery, which he has been practically denied for years by the interposition of these general demurrers and the decision of

the court thereon, and upon this state of facts the defendants interpose one of their elements of defense, namely, that the plaintiff did not say in his bill that all the proceeds of the purchase had not been paid. This is a matter of *fact*, and at present lodged in the breasts of the defendants, and we do not see exactly how such an omission can aid the defendants, when it is for *them* to show whether or no the money was all paid before *notice* of the equitable title and rights of the plaintiff; but we may safely let this pass as one of the mysteries of this case. The money, notes and proceeds paid by these defendants did not move to the trust or in discharge of the trust, but was to the knowledge and with the acquiescence of the defendants paid to Whipple, in violation and fraud of the trust, and through the very hands of these defendants. There are no broken links in this chain of events that so firmly bind and connect these defendants with the first and original conspirators, and none of these acts set out as collusive and fraudulent are denied, but what is claimed is that these acts are *not such* acts as constitute fraud in the defendants, admitting them to be true. Such a statement is in utter contempt of all law, and indicates the presumption of this magnificent body of conspirators, under the lead of their pirate chief, Rodney M. Whipple, to commit a fraud and embark in a conspiracy to swindle and defraud a too confiding man out of millions of dollars, and keep him impoverished for years of acrimonious and exhaustive litigation, whilst they are aiding the chief conspirator to hold and waste his property. And this, it is assumed, *is law*, integrity, honor, virtue, RIGHT, when done by these bold and wealthy swindlers. The Supreme Court ordered restitution, equity and right to Ambler. The question now is, shall he be able to ob-

tain it, or is the decision of the Supreme Court of the United States inoperative and the court powerless to enforce its decisions when an inferior court determines to interpose its executive action? For *that* is really and substantially the question in this case. What is the decision of Judges Dillon and Treat, and argument of counsel in this defense, but an arraignment of the decision of the Supreme Court of the United States and practically, in effect, a reversal of its decree so far as the plaintiff is concerned in this cause, as the case now stands? By what authority does this judgment against Whipple and Dickerson exhaust the plaintiff's right to recover from confederates and conspirators with Whipple and Dickerson, whenever and wherever found? Your Honors will bear in mind that the decision of the Supreme Court rendered by your Honors (Record, p. 27) holds that "the profits made or *to be made out of them*" shall inure to the benefit of Ambler to the extent of one-half, thus holding Ambler's right to account open until all rights and claims are finally settled under the patents, so that any reference to the former accounting has no bearing on this case, and needs no further answer. The plaintiff claims and submits to your Honors that he can follow the property and its proceeds as long as they can be traced into the hands of any purchaser who acquires title from the fraudulent trustees with notice, and if the purchase is made pending a suit, the property purchased not only becomes a trust in the hands of such purchaser, but he himself becomes a party privy to the suit if he acquires title of the litigating parties.

VIII.

The trust estate was antecedent to the legal title in Dickerson, or Dickerson and Whipple, by the memoran-

dum of agreement of May 24, and the assignment in trust of May 25, 1869, and the same was of record and in operation before the confederacy of Whipple and Dickerson and the fraudulent application by Dickerson for letters patent, and the first legal title was secured from the Government.

IX.

We are asked, "with this state of facts existing, why is it these defendants have not a right to deal with Whipple and Dickerson, as acting for Ambler, as well as them?" Because Whipple and Dickerson did *not* act for Ambler. Does the counsel assume that Whipple could bring Dickerson into this partnership and trust without the consent of Ambler, and against his will? No; *that* assumption is not possible. The relation between Whipple and Dickerson was that of confederates in a scheme of fraud, which they subsequently enlarged and extended by taking in Blunt and Insley into the conspiracy, with whom and subsequently the other defendants in this cause, and this state of facts fully answers the question of the counsel.

X.

As to a suit for an infringement, such action rests upon the right of the patentee to sue all persons using or vending the invention, covered by the patent, without authority, and has no possible relation to or bearing upon this case. There is no issue here as to infringement or of purchasers under a *plain* assignment of a patent, and we do not contend that a suit upon such an assignment, or for infringement merely, would create a

trust in persons purchasing during the suit; but under such a state of facts even a purchaser would be held to pay the purchase money over again, upon the right being established in another, either as to defect in title or royalty for infringement. For infringements Congress has made ample provisions.

XI.

The counsel say, it is not wonderful (with a knowledge of all these facts) that the defendants did not perceive their liability in purchasing of Whipple and Dickerson. This proposition hardly needs reply; but, we would say, that this blindness or indifference to consequences seems absolutely incredible with intelligent business men, which these defendants evidently are; but it is a matter of no importance to us whether they closed their eyes to the transactions of the conspirators or not, since the law makes it their duty to keep them open when so dealing; and, if they were not wilfully blind, they knew every fact and thing connected with these matters. The truth is, they acted with their eyes open, and marched into the parlor No. 5, Southern Hotel.

XII.

By an examination of the title of Whipple and Dickerson, these defendants learned the fact that Whipple was connected with Ambler, and that subsequently he connected himself with Dickerson, and by purchasing title under Dickerson for ONE DOLLARS nominal consideration, he compelled, or made it obligatory that the pretended invention of Dickerson should be called and known as the "WHIPPLE AND DICKERSON GAS GENERATING MACHINE, p. 17 of the record—*another mystery.* Were ALL these transactions within the terms of the

partnership and the trust? Have all parties acted in good faith? and has Whipple done his full duty to the partnership and the trust? Has he carried out the object and intentions—the covenants and agreements of the partnership and the trust? and have these defendants in good faith aided him so to do as far as their connection with the same is concerned? The affirmative of these questions is the basis of the defense in this case; and the negative the plaintiff's case. The whole tone and character of the defendants tend to show, and they seek to establish as a fact in the case, that the acts of sale by Whipple and Dickerson were *bona fide* and right, and not collusive and fraudulent. And Blunt and Insley, the constant companions of Whipple and Dickerson, are found creeping through all these dark transactions as the willing tools and henchmen of Whipple; and, in the *classic* language of Judge Dillon, the "stool pigeons" of this conspiracy and fraud, and *covers* these outrageous transactions.

XIII.

The plaintiff does show conclusively, both in the original and amended bill, that the partnership as to third persons, became inoperative as a partnership on the filing of his bill in Washington in the former case; all power to Whipple thereunder was suspended on the bringing of said suit; all authority thereunder had ceased, and nothing could be conveyed by Whipple or Whipple and Dickerson that did not attach to the trust and become a part thereof. The memorandum of agreement of May 24 was in full force and effect as to the trust in Whipple and the equity in Ambler, and so continues, and not otherwise, but for a settlement and account.

XIV.

Ambler succeeded to all the rights of the partnership *per se* by Whipple's abandonment of it, and the partnership is treated by the Supreme Court as at an end, except for the purposes of the trust, and it is decided by the Supreme Court that it is so treated by the parties themselves, and remained only as a contract to determine the rights of the parties under the trust into which it was incorporated and made a part.

XV.

That Ambler has a right to confirm the sales and receive his share of the proceeds from Whipple and Dickerson is a question that admits of no argument, but the plaintiff stands on higher grounds than this. The relations and transactions of Whipple and Dickerson with these defendants form a CONSPIRACY to defraud Ambler of his rights, and they THEREBY become liable for ALL of Whipple and Dickerson's fraudulent acts from the beginning of the conspiracy to the present time, and, until this matter is finally settled and concluded by a complete vindiction of Ambler's rights in the premises to the full end of the terms for which the patents are or may be issued, and all matters in relation thereto are finally settled and determined.

XVI.

There was but one way possible for Whipple to sell and discharge the trust, and that was in the name and for the benefit of Whipple and Ambler, and in good faith to share and share alike with Ambler in the profits derived therefrom; and this he did not do. Nor did he even keep an account or render quarterly accounts thereof, as he was required to do in article fourth of the memorandum of May 24, commencing on the first day

of October, 1869, or ever thereafter. In fact, the evidences of fraud, combination and conspiracy of these defendants with Whipple and Dickerson are too many, conclusive and overwhelming to need argument. In the language of the counsel, they *are* too plain for argument. Your Honor will bear in mind, the Supreme Court did hold that the TRUST did attach to the property and follow the proceeds, not only *onwards* from its decision, but backwards to the beginning or conception of this scheme of fraud between Whipple and his confederate Dickerson; and it is not true that Ambler, in any sense, assented to the sales made by Whipple and Dickerson and their confederates, either before or after they were made; but he was *compelled* to accept the situation, and seek his remedy through the medium of the courts. To talk about the rights of Ambler being extinguished while his title and the trust remain unsatisfied, is sheer stuff, and unworthy of a moment's consideration. Ambler filed a bill to prohibit these sales, and prayed an injunction to stop them till his rights could be defined, of which these defendants had notice, and yet these defendants go on and purchase as freely and boldly as though they were dealing in good faith with an honest trustee, and not in bad faith with a dishonest trustee and his confederates.

XVII.

That any person *compos mentis* and *sui juris* can, part with or sell his equitable interest cannot admit of a doubt, but *that* is *not* this case, and this application of principle is so completely outside of this case as to need no comment in the light of the facts, which conclusively show that the plaintiff did not alienate his equitable interest so as to extinguish the trust as against the *vendee* fraudulently dealing with the fraudulent trustee.

XVIII.

The solicitors use the word "*absolute*" with great unction, as found in the assignment in trust, and thereby endeavor to make it appear that the assignment itself is *absolute*, when upon its face and its terms it is not, as "the same is to be held and enjoyed by the said R. M. Whipple, for the uses and purposes aforesaid," and these "uses and purposes" are fully set forth in the memorandum of agreement of May 24, 1869, and in the body of the assignment itself. Did this fact escape the observation of the learned counsel, or was it intentionally omitted to mislead the court? The word *absolute* in this assignment seems peculiarly convenient, and bears the same relation and is made to play the same part in this branch of their case as the sentence "*now exists in full force and effect*" does in another branch of this most singular theory of defense, namely, to magnify the *word* and the *sentence* into the whole legal intendment of the instruments in which they are found, as against the full force and obvious purpose and meaning thereof.

XIX.

We are asked, "Of what value are the suggestions of this bill that these sales are breaches of the trust?" The allegations of the bill are founded upon the trust — the original breach of the trust, the confederacy of Whipple and Dickerson, the enlargement of the fraud by conspiracy with Blunt and Insley, and its further extension by their association with the other defendants to carry out the scheme and extend its operations; and this conspiracy is rendered complete by a chain of facts and events in which there are no broken links—from Whipple to Dickerson, from them to Blunt and Insley,

and from all of them to the other defendants, and these defendants now hold the trust property for the State of Missouri. It is well settled that the plaintiff is *not* required to set out all the details and minute particulars that go to make up the conspiracy to defraud the plaintiff of his property, his money and his rights. He has surely alleged and proved enough, if in the power of language to do so, to put these defendants upon a defense which will probe their conscience as to the real facts in the case, and this they seek to prevent by the interposition of general demurrers. Would counsel have us to understand that *they believe* that "the papers show that they were in direct performance with the trust" in making these enormous sales? No, *that* is hardly possible. It would be too great a stretch of our credulity. We therefore leave this question to the decision of the Court, with the full conviction that such sophistry cannot fail to be duly appreciated in determining this case upon these demurrers.

As to Ambler keeping Whipple as his agent, partner and trustee "before the world," after filing his bill in the former case, is certainly a singular assumption, in view of the facts, as fully set forth in the bill, the exhibits and proofs on file in the case.

XX.

The fact of the confession by *pro confesso* in said case by defendant Hutchins, and of his answer and affidavit in the case of The Manufacturers' National Bank of Chicago against him, filed as exhibits 20-21, pp. 160 to 168 of the record submitted, are not considered or taken notice of by the solicitors of his co-defendants, and these acts of Hutchins are left with all their legal force and bearing for the consideration of the Court.

XXI.

Your Honors will also observe that the plaintiff, in his amended bill, makes Whipple a party to this suit under the rulings of the Court here, with great caution, and only "for the legal intendment and for all the lawful purposes thereof, as fully and entirely as he may be found a proper party defendant in this cause, and as the facts and circumstances may make it appear to your Honors in the prosecution of the same," (par. 1 p. 107), and the prayer against him is solely for an authoritative dissolution upon terms, by a court of competent jurisdiction, and with which these defendants have nothing whatever to do. That Whipple should be made a party to this suit for any use or benefit to the defendants, the plaintiff has not for a moment believed, and he is not now made a party in any such sense or for any such purpose, and we are *not* compelled to secure his *presence* before this court for the benefit of his co-conspirators, or for any other purpose.

If the theory of the defense be sustained, it is *impossible* by human language to establish a fraud, combination or conspiracy, or to set forth the acts of the parties going to show the same. It would also be impossible to create a trust that could not be taken advantage of by a collusion and a conspiracy with a fraudulent trustee.

I.

In view of the charges and allegations of the bill in this cause, it would seem that nothing more was, or could be necessary, than to establish the fact that the defendants intruded upon the suit of Ambler v. Whipple and Dickerson, upon which the foregoing decision

was made, and to so clearly connect the defendants with the trust property—the breach of the trust by Whipple as the trustee of Ambler—Whipple's confederacy with Dickerson to defraud Ambler of his rights in the property covered by and chargeable with the trust, to thereby establish their close relation and fraudulent combination with Whipple and Dickerson in these transactions, that they cannot lawfully resist Ambler's right to his share of the profits derived and to be derived from said patents Nos. 95,665 and 102,662, which have been decided as trust property, and to enure to the benefit of Ambler to the extent of one-half; and yet the solicitors for the defendants persist in raising, and seek to make false and fictitious issues, and issues barred by the decision of the Supreme Court in the former case, establishing as a fact the *direct trust* in Whipple as partner and trustee of Ambler; and, by raising and creating in his confederate Dickerson, a *constructive trust* by operation of law, because he had knowingly so connected himself with Whipple in his frauds on Ambler that he could not resist Ambler's right to one-half of the two patents issued to Dickerson and Whipple, and of the profits made and to be made out of them.

II.

That these defendants, as shown by the record proofs exhibited, became during the pendency of said suit of Ambler v. Whipple and Dickerson, purchasers of the trust property, with full knowledge of the trust; of the breach of the trust; of the confederacy of Whipple with Dickerson to breach the trust; of the suit pending in relation thereto; of the equitable title and rights of the plaintiff, and that these defendants so connected themselves with them and their confederates in their fraud-

ulent acts and doings, and shared and dealt with them to such an extent, as the facts show, as to fasten upon these defendants and each of them, community of interest and privity in design, in dealing with the subject matter of said suit and the violated trust.

We will now proceed to present to the consideration of the court some of the details and elements going to show such acts as, in our opinion, clearly and unequivocally establish fraud in the defendants.

III.

That after said suit was brought, January 4, 1870, Whipple and Dickerson, in furtherance of the scheme, called in James G. Blunt, first as agent, then as partner and confederate in the fraud; and that thereafter Merritt H. Insley, who was the partner of Blunt, united with them and ostensibly bought the rights of certain districts, April 21, 1870, *pendente lite*. The scheme of fraud, combination and conspiracy upon the invention of Ambler, and the franchises covered by the trust, then included Whipple and Dickerson, and Blunt and Insley; these parties were then united in a joint interest and privity in design, forming a conspiracy to appropriate, use and sell for its benefit, the property or franchise covered by and chargeable with the trust.

Subsequently to this, Whipple transferred *without consideration* to James G. Blunt certain rights, privileges and franchises of the trust property *in his own name solely* and pending said suit, and which James G. Blunt *voluntarily* took with full notice of the trust and of the equitable title of the plaintiff, *four States*, to wit: West Virginia, December 10th, 1872; Alabama, January 13th, 1873; Texas, January 13th, 1873, and Louisiana, January 13th, 1873, and the transfers of Whipple to Blunt

of these four States were duplicated so as to include both patents, 95,665 and 102,662.

It will be seen that these transfers were made not only pending the suit of Ambler v. Whipple and Dickerson in relation thereto, but *after* the confederation and conspiracy was fully established in the combination of Whipple and Dickerson and Blunt and Insley.

"It is a universal rule that if a man purchase property of a trustee, with notice of the trust, he shall be charged with the same trust in respect to the property as the trustee from whom he purchased. And even if he pays a valuable consideration with notice of the equitable title of a third person, he shall hold the property subject to the equitable interest of such person; of course a mere *volunteer*, or person who takes the property without paying a valuable consideration, will hold it charged with all the trusts to which it is subjected, whether he have notice or not." (Perry on Trusts, § 217, p. 189.) If an estate in trust be conveyed to a volunteer (Blunt,) he will be bound by the trust, although he had no notice of it. (Cable v. Nonemaker, 78 Penn., p. 501.)

IV.

That some time after the confederation of the four—Whipple, Dickerson, Blunt and Insley—had been consummated between them, and some time in the month of April, 1870, or previously thereto, they all united to extend the fraud; and for this purpose, and to bring into the same scheme of fraud, combination and conspiracy the other defendants in this suit, they negotiated with them, and subsequently sold to the Missouri Liquid Fuel and Illuminating Company, which, in furtherance of the scheme, had been incorporated for that purpose,

under the corporate laws of the State of Missouri, in fraud of the rights of the plaintiff, in the month of December, 1871, and said company, after its incorporation, purchased of Blunt and Insley, as the assignees of Whipple and Dickerson, the said letters patents Nos. 95,665 and 102,662, and said defendants, Blunt and Insley, at the incorporation of said company, became directors thereof, and owners and shareholders therein, becoming thereby both vendors and vendees in the sale and purchase of the property covered by and chargeable with the trust. And said company thereafter dealt directly with Whipple and Dickerson in relation to said patents and the improvements thereon, in fraud of the rights of Ambler, and all these negotiations and transactions were done by these defendants and made with Whipple and Dickerson, with full knowledge and timely notice of the trust—of the equitable title of the plaintiff to the property so purchased, and of the suit of Ambler vs. Whipple and Dickerson, and all things in relation thereto.

That this purchase was fraudulently made by a transfer of the title from Dickerson and Whipple to Blunt and Insley, and from Blunt and Insley and Whipple and Dickerson to the Missouri Liquid Fuel and Illuminating Company for the sum of $500,000. "If the assignee transfers his contract, the person to whom he transfers it is bound by the same equities which existed between the parties to the contract, having purchased with a full knowledge of the state of things." (Kinsman vs. Parkhurst, 18 How.)

"It is well settled in equity that all persons coming into possession of trust property with notice of the trust, shall be considered as trustees, and bound, with respect

to that specified property, to the execution of the trust." (1 Pet., 309.)

In the case of Cable vs. Nonemaker, 78 Penn., pages 505-6, the following doctrine is laid down: "A trust already in existence and annexed to the present subject-matter is created *de novo* as against a person who takes by a title derivative from the original trustee. (Lewin on Trusts, 205.) If an estate be passed by a trustee to a stranger by conveyance, then the grantee, if he be a volunteer, will be bound by the trust, whether he had notice or not; for, though he had no actual notice of the equity, yet the court will presume it against him, where he paid no consideration. (*Ibid*, 206.) But if the grantee be a purchaser of the estate at its full value, then if he, with notice of the trust, purchase, he is bound to the same extent and in the same manner as the person of whom he purchased. (Dunbar vs. Tredennick, 2 B., and B. 319.) For, knowing another's right to the property, he throws away his money voluntarily and of his own free will. (Mead vs. Lord S. Orrey, 3 Atk., pp. 228 and 336. And the rule applies not only to the case of a trust property so-called, but to purchasers with notice of an equitable encumbrance, as of a covenant or agreement affecting the estate. (Daniels vs. Dandson, 16 Vesey, 329.) It would be a travesty of legal principles to hold two men competent by a juggling use of legal form to wipe out a third man's legal rights. (*Ibid.*) A legal principle is never so applied as to protect a fraud. (*Ibid.*) Considered in another aspect, the case seems equally plain. While the title remained in Eves, he held it bound by the trust for the benefit of the plaintiff, which the mortgage had created; when the trust was passed to the defendant, he, having notice of the plaintiff's equities, became by operation of the

law invested with the character of trustee, with precisely the same obligations that the contract imposed on Eves. (78 Penn., p. 506.) The title of the store was held by Eves in trust to the extent of the unpaid purchase money, and Nonemaker took it subject to the trust (*Ibid.*(As to Cable, the contract between Eves and Nonemaker worked no change of title to the goods; it left them as when the mortgage was made. (*Ibid.*) The trust for Cable as to the goods existing in Eves, the transfer to Nonemaker created him trustee for the same use. (*Ibid.*) When the defendants in this cause purchased they took the property with the burden that the trust imposed upon it.

"So property, obtained by one through the fraudulent practices of a third person, will be held under a constructive trust for the person defrauded, though the person receiving the benefit is innocent of collusion. If such person accepts the property, he adopts the means by which it was procured; or, as Lord Chief Justice Wilmot said, 'Let the hand receiving the gift be ever so chaste, yet, if it comes through a polluted channel the obligation of restitution will follow it.'" [Perry on Trusts, § 211.]

"This protection to a *bona fide* purchaser for value without notice is clear and certain, but it is hedged about with great care. It is said to be a shield to protect, and not a sword to attack. It is surrounded by restrictions, so that it may not be cloak for fraud. The defendant in a suit of equity must clearly and unequivocally swear in his answer that he is a purchaser for value without notice, and he must set forth all the particulars of the purchase and the title, or pretended title of the person from whom he purchased. He must show an actual conveyance and not merely an agreement for

a conveyance, and it must be shown that the consideration money named in the deed was paid in good faith. It is not enought that the consideration was secured, to be paid, nor is a recital of payment in the deed sufficient; there must be an actual payment. Then he must also make an explicit denial of the title which is attempted to be set up. A denial of knowledge of the particular person who might assert such title is not sufficient; notice must be positively and affirmatively denied, and not evasively and inferentially. If particular instances or circumstances of notice or fraud are alleged, there must be clear, special and particular denials of each and every circumstance. These stringent rules are necessary for the protection of the equitable interest of one person where the legal title is in the hands of another." (Perry on Trusts, § 219.)

V.

That the defendants, including Blunt and Insley, and in furtherance of the conspiracy, formed and incorporated said company for the express purpose of further breaching the trust and defrauding Ambler of his rights under the contract with Whipple, and in violation of the trust, and in pursuit of the same scheme of fraud first inaugurated by Whipple and Dickerson, and subsequently joined by Blunt and Insley, and thereafter by these other defendants; and this was done by purchasing title of a fraudulent trustee, by accepting, holding and selling the same, and by dealing with the property covered by and chargeable with the trust, and with a full knowledge of the state of things.

VI.

At and during this time it is alleged that Whipple and Dickerson were men of no commercial standing or

financial credit, and the intervention by collusion of Blunt and Insley, who were men of means and commercial credit, was intended as a cover to the fraud, or to further and advance the same in the negociations then pending for the sale of the patents in the name of Whipple and Dickerson, and in the fraud of the rights of Ambler; and after the combination of Whipple and Dickerson and Blunt and Insley was formed, and they united with the other defendants in this bill. They were greatly aided by the influence and co-operation of men of such high standing and commercial credit as the said other defendants in this bill; and which influence was used in furtherance of the scheme to possess themselves of the property and rights of Ambler, with full knowledge, acquiescence, consent and co-operation of these defendants and each and every of them.

VII.

In the meantime Ambler proceeded to assert and vindicate his right to the priority of invention by due and timely application for a patent on his invention and discovery, which had been seized upon, appropriated and patented to Dickerson and Whipple as aforesaid. This application was declared in interference with the patents granted to Dickerson and Whipple, Nos. 95,665 and 102,662, and these patents were set up by Dickerson and Whipple *adversely* to the application of Ambler, which gave them in the Patent Office a *prima facie* case over Ambler, and which Ambler had to overcome, and which raised the question of priority of invention. This question was duly made an issue in the case; and after the proper preliminary steps were taken, *three* separate trials were had, and priority of invention upon each trial was decided in favor of Ambler over *both* the patents of

Whipple and Dickerson, and letters patent were issued thereon to A. I. Ambler as the first, *sole* and original inventor, Sept. 10, 1872.

VIII.

That Dickerson and Whipple, on or about the 14th day of March, 1873, with the knowledge, acquiescence and consent of these defendants, as well as by their confederation and co-operation, surrendered said letters patent Nos. 95,665 and 102,662, in furtherance of the scheme, to the Patent Office of the United States, to be cancelled after said letters patent had been successfully impeached by Ambler upon three separate trials in the Patent Office as aforesaid. Your Honors will bear in mind that the Patent Office of the United States *three* times decided the rights of the case in favor of Ambler, as did the Supreme Court of the United States twice decide the same in his favor, and he has been called upon to meet similar issues in the Circuit Court of the United States for the Eastern District of Missouri. That, upon the surrender of said patents by Dickerson and Whipple, March 14, 1873, they made application, *ex parte*, for re-issues thereon, without the knowledge or consent of the beneficiary of the trust, and March 18, 1873, after said patents Nos. 95,665 and 102,662 had been successfully *impeached* by the plaintiff as aforesaid, and which re-issues are numbered 5,326 and 5,327, and dated March 18, 1873, and these re-issues so applied for and obtained by said Dickerson and Whipple, were intended to further embarrass and complicate the rights and title of the plaintiff, and to fortify Whipple and Dickerson in their breach of the trust, in its varied and extended ramifications; and these re-issued patents, having for their foundation the original patents, *are now*

set up as an adverse title to the plaintiff, to the original partnership and to the trust, and the same were applied for and obtained during the pendency of said former suit upon the subject-matter of the cause of action therein set forth, and with the knowledge, collusion and consent of these defendants, as fully charged and set forth in the bill.

IX.

As the question of fraud as to the acts of the defendants in this cause is denied by the Court below, it is proper to show the primary and fraudulent acts complained of, in the order in which they were set in motion, and the defendants implicated therein. 1st. The confederacy of Whipple and Dickerson at the shops of Pettit & Dripps in Washington, Sept. 4th, 1869. 2d. The application of Dickerson for letters patent upon the invention of Ambler. 3d. The collusion aid and assistance of Whipple, the partner and trustee of Ambler, therein, and the attempted purchase by Whipple of Ambler's interest through the pretended agency of Martin. 4th. The partnership of Whipple and Dickerson. 5th. The assignment by Dickerson to Whipple, and Whipple's acceptance of the same, Sept. 24th, 1869. 6th. The issue of letters patent in the name of Dickerson and Whipple, Oct. 12th, 1869. 7th. The sales and transfers made under said patent. 8th. The joint application of Dickerson and Whipple for other letters patent and the issue of letters patent to them, May 3d, 1870. 9th. The fraudulent sales and alienation of said property, and the appropriation of the proceeds thereof. 10th. The sales to Blunt and Insley *pendente lite* said suit. 11th. The *voluntary* sale to Blunt and his acceptance of the same as a *volunteer*, without any consideration, of

four States. 12th. The large and continued sales made by Whipple and Dickerson and their confederates, Blunt and Insley. 13th. The formation of large stock companies in many and divers places to the amount of millions of dollars. 14th. The negotiations with and the sales to the other defendants, and the formation of a stock company under the laws of the State of Missouri, fraudulently, and in the furtherance of the scheme. 15th. The application for re-issues *ex parte* upon the impeached patents, with the aid and consent of these defendants and each and every of them; and all done during the pendency of said suit of Ambler v. Whipple and Dickerson, and with a full knowledge thereof and of all things in relation thereto, and of the equitable title of the plaintiff. These *are* palpable, direct and conclusive acts of fraud, combination and conspiracy as charged in the bill, and of which they cannot stand purged by general demurrers without plea or answer. The demurrers by law admit the allegations of the bill.

That these defendants further fix the fraud upon themselves by their own conduct, acts and transactions in dealing with Whipple, and by accepting title of Whipple and Dickerson and their confederates Blunt and Insley, by knowingly accepting and acknowledging the fraudulent substitution of the illegal firm of Whipple and Dickerson for the true and *bona fide* firm of Whipple and Ambler. The *object* of the confederation between Whipple and Dickerson is fixed by the Supreme Court of the United States as a *scheme of fraud* to swindle Ambler out of his rights in the invention which was the subject-matter of the partnership, of the trust, and of the suit of Ambler vs. Whipple and Dickerson, and it requires no great penetration to see the object of the

alliance between Whipple and Dickerson and Blunt and Insley, and subsequently the collusion, combination and confederacy of the four conspirators with the other defendants in this bill, all having the same privity in design and community of interest in pursuit—namely, the fraudulent appropriation of the trust property of the plaintiff and the proceeds thereof; and in this way and for this purpose these defendants became purchasers of the trust property.

In the leading case of Le Neve vs. Le Neve, 3 Atk. 664: 2 Lead. Cas. Eq., 23, this doctrine is stated by Lord Chancellor Hardwicke, in the following language: "A person who purchases an estate (although for a valuable consideration) after a notice of a prior equitable right, makes himself a *mala fide* purchaser, and will not be enabled, by getting in the legal estate, to defeat such prior equitable interest." (Bispham's Principles of Eq., p. 257.) "Fraud or *mala fide*," said the same learned judge, "is the true ground on which this Court is governed in cases of notice."

If the purchaser has notice of the trust he will be bound in the same way as the original trustee; in other words, he will be constrained to hold the legal title as a trustee for the equitable owner (Hill, 164, 259, 4 Am. ed. and notes; Perry, 217; Bispham's Eq., 257.)

A man who acquires, even for a valuable consideration, a legal title, with an knowledge that it is affected by an equity, takes it subject to the equity. [Bispham's Eq., Sec. 262.] In cases where the second sale is a fraud on the part of the vendor, and if the second vendee has notice of the first conveyance, the purchase itself is an act of collusion. [Bispham's Eq., Sec. 261; 1 Roule, 246.]

In this case it is clear that the sale on the part of the vendors, Blunt and Insley, to themselves and their co-defendants as vendees, was an act of fraud and collusion with Whipple and Dickerson and the defendants as second vendees, because the second vendees had notice of the first conveyance in manner and form as charged in the bill, and which fact of notice is legally admitted by the demurrers, and which the defendants are estopped from denying, and the Court cannot lawfully deny for them.

He [the purchaser,] must, to be protected, hold the legal title and have paid the full amount of the purchase money. [See Am. note to Bassett & Nosworthy, 2 Leading Cases Eq., 1 and notes; Perry, § 221; Bispham's Eq., § 266, p. 260.]

In the United States also the rule is the same in cases in which the legal title is conveyed but the purchase money not paid at the time of the notice. [12 Mech., 339–343; 1 Johns. Ch. 566; 32 N. H., 382; 1 Story Eq., 90; Perry, § 221; Bispham's Eq., § 267, p. 260.]

It is a general duty of the trustee to use the trust property for the purposes of the trust alone; any other use of it is a breach of trust and is unlawful. It follows that if trust property is sold, it must be sold for the benefit of the *cestui qui trust*. In other words, the sale must inure to his advantage and the proceeds must be applied in accordance with the design of the trust. It follows, moreover, that a disposition of the property for any other consideration than one moving to the trust is a fraud upon the trust, and that no person who acquires the trust property under such circumstances, with notice of the trust, can claim to hold it free and dis-

charged from the rights of the *cestui qui trust.* [Bispham's Eq. § 277, p. 269.]

But again, a party may be held responsible even for an honest mistake, if the duty of knowing the truth is for any reason cast upon him. In such a case, mistake, ignorance or forgetfulness is no excuse. (Kerr, 67; Bispham's Eq., § 214, p. 213.)

It must be remembered, however, that a purchaser, even in the United States, who colludes with an executor or trustee, will be held responsible for any misapplication of trust money growing out of the same transaction, but this falls under a different doctrine, namely, fraud. (Bispham's Eq., p. 271.)

Although courts of equity have not made general definitions stating what is fraud and what is not, they have not hesitated to lay down broad and comprehensive principles of remedial justice, and to apply these principles in favor of innocent parties suffering from the fraud of others. (Perry on Trusts, § 170.)

The leading principles of this remedial justice is by way of equitable construction to convert the fraudulent holder of property into a trustee, and to pursue the property itself as a fund for the purpose of recompense. In investigating allegations of fraud courts of equity will discard mere technicalities and artificial rules and look only at the general characteristics of the case, and go at once to its essential materiality and merit. (Perry, § 170, p. 139.)

It is also a well-settled principle, in dealing with trust property, that "the least concert or collusion between parties to an illegal transaction makes the act of one the act of all." [74 Penn.; P F. Smith, 24 p. 112.] Said C. J. Gibson, in Rogers v. Hall, 4 Watts, 361, "The

least degree of concert or collusion between parties to an illegal transaction makes the act of one the act of all." [*Ib.*] This is repeated by Rogers, J., in Gibbs v. Neeley, 7 Watts, 307, and so McKinley v. McGregor, 3 Wheaton, 397. The strongest of all on this point is Bredin v. Bredin, *supra*. There was no evidence of any acts or declarations on the part of John Bredin, before he accepted his brother James' bond, to connect him with the fraud on James' creditors; consanguinity and certain circumstances in his subsequent acts were the only evidence. Yet, there, Gibson, C. J., said, "that after much reflection he had changed his opinion, and he supported the evidence of James' declarations, which went to impeach the bond in the hands of John." In Creaker v. Temple and Barker, *supra*, it was said by Justice Woodward "that all experience proves, and rules of evidence are founded in human experience, that if fraud is to be detected under the various cloaks it puts on, the conduct of the parties before and after the fact complained of, as well as immediately connected with it, must be fully examined." The Justice says, in McKinley v. McGregor, *supra*, "for this purpose (fraud) all the transactions of Mrs. McKinley, and her declarations in connection with the business in which she was engaged as the agent of her husband, was properly admitted as evidence."

Justice Dillon, in his "observations" upon deciding the demurrers against the plaintiff in a former suit, said: "An argument was made here to sustain the right of Mr. Ambler to bring this bill in his own name, based upon certain observations of the Supreme Court. In this suit of Ambler against Whipple and Dickerson, the Supreme Court held that in this partnership arrangement" (*the learned Judge says nothing of the trust, but of*

the partnership only) "Ambler was entitled to one-half as against Whipple, and they said also as against Dickerson, because he had knowingly connected himself with Whipple in the perpetration of the fraud. That has misled the counsel for the plaintiff into thinking that everybody against whom they can charge fraud can be sued by Ambler in the same way that Ambler could sue and did sue his co-partner, Whipple." Had the learned Judge said that the "observations" of the Supreme Court had *led* the plaintiff's counsel into thinking that everybody against whom they can charge fraud *in this transaction* can be sued in the same way that Ambler could sue and did sue *Dickerson as the confederate of Whipple, the partner and trustee of Ambler, for accounting, because he had knowingly connected himself with Whipple in the perpetration of the fraud,* the learned Judge would have presented the true issue in the case. "It is true that a disposition to cheat one person cannot be called in to aid evidence of fraud in a subsequent or prior and distinct transaction. But when it is one of a series of acts, although with distinct and different persons, it may be received to prove a general combination or preconcerted plan to cheat and defraud, of which the one in controversy may be the result." (*Ib.*)

X.

If the doctrine is true and rests upon well-settled authority, that "the least degree of concert or collusion between the parties to an illegal transaction makes the act of one the act of all," as decided by C. J. Gibson, as reported in 4 Watts, 361, and 7 Watts, 307, and as found in the text books and elementary works, the plaintiff humbly invokes the same, and prays your Honors to consider this principle of law in its application to this cause.

Defendant Stilson Hutchins (in the former case, 910), though duly served with the writ of subpœna, failed to enter his appearance as he was required by law and said writ to do, and made default, and thereby confessed, and judgment *pro confesso* was duly entered against him by order of Court at the September term, and on the 25th day of Feb'y, 1876; then, your Honors, if the doctrine prevails in this case, that the act of one is the act of all, all have confessed, and judgment *pro confesso* must be entered against all in that behalf, unless the co-defendants of said defendant Hutchins can purge themselves of all concert or collusion with him in the illegal transactions charged in the bill; provided, of course, that the transactions are not illegal and fraudulent, but are legal and right, but certainly such confession on the part of one defendant, to a bill charging combination, conspiracy and fraud, conclusively showing concert and collusion between all the defendants in their dealings with the fraudulent trustee of the plaintiff and his confederate Dickerson, and with their assignees, defendants Blunt and Insley; and unmistably showing that defendant Stilson Hutchins, has the same privity in design and community of interest with each and every and *all* of his confederates, as the record proofs, exhibits and affidavits filed with and to support and fortify the bill clearly and conclusively establish. And thereupon the plaintiff humbly submits to your Honors that the act of defendant, Stilson Hutchins, in making default in this cause, *is* such an act as to bar and legally estop the interposition of general demurrers going to the whole equities of the bill on behalf of his co-defendants, equally guilty of combination, conspiracy and fraud against the plaintiff in dealing with the trust property, and of purchasing the same *pendente lite* said suit of a fraudulent trustee, as fully charged and set forth in the bill. The

plaintiff humbly and most earnestly prays your Honors to consider this feature of the case. Defendant Hutchins is, and was at the time of the organization of the Missouri Liquid Fuel and Illuminating Company, in October, November and December, 1871, and previously thereto, the editor and proprietor of the *St. Louis Times*. That said paper published the notices of the invention when supplying fuel for operating the machinery of the mechanical department at the Fair Grounds in October, 1871, as will be found set forth in this cause.

That defendant Hutchins was one of the promoters of the scheme of Whipple and Dickerson and Blunt and Insley, and aided and abetted them in forming and incorporating said company. That he became a corporator, a stock or shareholder in and a director of said company at its incorporation in December, 1871, and thereby concerted and colluded with Whipple and Dickerson and Blunt and Insley and the other defendants in the sale, purchase and transfer of said trust property, in violation of the trust and with full knowledge of the equitable title of the plaintiff, of the suit aforesaid, and of all things in relation thereto. It is true, your Honors, that although, where there are several parties to the record on the same side, the admissions of one "are not permitted to affect others who may happen to be joined with him, unless there is some joint interest or privity in design between them." [Greenleaf Ev., 3d ed., sec. 174.] "Yet it is otherwise when there is a joint interest or privity in design." [Jackson vs. Reynolds, 1 Caines, 444, *n.*; Hardy vs. De Leon, 5 Texas, 243-244; Adams Eq., pp. 20, 343-344.] "Admissions in pleadings are, in fact, estoppels." [Livingston vs. Jones, 1 Fish, 521; Union Mutual Insurance Company v. Mutual Insurance Company, 2 Curt., 524.] Your Honors will

observe by reference to Ambler's exhibits on pages 84–85–86–87, record, that the Manufacturers' National Bank of Chicago brought suit in the court below against defendant, Stilson Hutchins, to enforce the payment of his note for $5,000 as a part of the consideration paid by these defendants to Whipple and Dickerson and Blunt and Insley, and delivered to Rodney M. Whipple for the purchase of the patent right to the State of Missouri of patents 95,665 and 102,662, including the share and trust property of the plaintiff in this suit.

That the affidavit for continuance in said cause of defendant, Hutchins, set up as a defense to said note the suit of Ambler vs. Whipple and Dickerson, pending in the Supreme Court of the District of Columbia; the interference in the Patent Office of Ambler vs. Whipple and Dickerson, and such further and other matters as to conclusively establish against these defendants and each of them privity in design and community of interest in the subject-matter of this suit and the former suit, by the purchase of the trust property in violation of the trust.

It is also shown by facts in the case that defendant, Hutchins, at the meeting at parlor No. 5 of the Southern Hotel, in St. Louis, for the organization of the company was appointed and acted as secretary of the meeting; and after the permanent organization was effected, defendant, Hutchins, was appointed and acted as secretary for the company for the first year of its organization, and, as such secretary, he signed on behalf of the company, with defendant, Chouteau, as president, the contract made with Thomas S. Dickerson and Rodney M. Whipple, December 23, 1871, and to which the seal of said company is attached. In view of the fact of the

judgment against defendant, Hutchins, entered in the former cause *pro confesso*, and affidavit in the case of the Manufacturers' National Bank of Chicago against him in the court below, these facts are significant, and *indisputably establish the fact of privity in design and community of interest* between defendant, Hutchins, and all and each and every of his co-defendants, and thereby bringing them *all* within the rule *that the confession of one in an unlawful transaction is the confession of all.*

XI.

It is shown that the sales made by Dickerson and Whipple and their confederates since May 24th, 1869, as exhibited to the court below by the transcript record of the Patent Office, amount in the aggregate to the large sum of $7,591,067, and it is believed that of the special *purchase money* covenanted to be paid by the defendants to Whipple and Dickerson and their confederates, Blunt and Insley, one-half is still due and unpaid, and all these sales were made in breach and violation of the trust.

XII.

The suit brought January 4th, 1870, has been continuously prosecuted in good faith from that time to the present, and on appeal to the Supreme Court was finally decided, November 30th, 1874, as aforesaid, in favor of the plaintiff, and all the transactions alleged in the bill have transpired during the pendency of said suit, with a full knowledge on the part of the defendants of the same and of the equitable title of the plaintiff.

And the principle is well settled that a *purchase pendente lite* carries with it all the consequences of the suit. "And full notice of a trust draws after it all the con-

sequences of a full declaration of the trust as to persons chargeable with such notice." (1 Pet., p. 174.)

The doctrine of *lis pendens* is one by which a suit in chancery duly prosecuted in good faith and followed by a decree is constructive notice to every person who acquires from a defendant, *pendente lite*, an interest in the subject-matter of the litigation of the legal and equitable rights of the plaintiff as charged in the bill and established by the decree. (5 H. V. M.; 7 C. E. Green, 531, 544; 2 Sug. V. and P. 533; 71 Johns, Ch. 566; note Am. Ed. Bispham's Eq., § 274, p. 266.

It is a doctrine of courts of equity of ancient origin, and in this country is founded on Chancellor Kent's opinion in Murry vs. Bolton, decided in 1815. It is based upon the theory that legal proceedings during their continuance are publicly known throughout the realm (Adams' Doct. of Eq., 157), and while in some few cases in this country it has been rejected (Neumon vs. Chapman, 2 Rand., 93; City Council vs. Page, Spear's Eq., 159; King vs. Bell, 28 Conn , 593), it has been very generally adopted throughout the United States, both in the courts of law and in equity. (2 Johns. p. 441; 1 Desaus., 167; 3 Bibb, 279; 1 Bush, 427; 8 Alab., 570; 6 Har. & Johns., 21; 7 Blackf., 242; 8 Allen, 363; Phillipp's Eq., 213; 24 Iowa, 154; 28 Ill., 319; 32 Ill., 331; 16 Iowa, 10; 27 Cal., 50; Bispham's Eq., p. 266; same, § 277, pp. 269 to 271, inclusive).

In order to fair application of this doctrine of *lis pendens* to any particular case, the property to be affected by it should be so pointed out by the proceedings as to warn the whole world that they meddle with it at their peril. (I. V. Mew, 1 Strobh. Eq., 180; Green vs. Slater, 4 Johns. Ch., 38; Edwards vs. Crinshaw, 1 McCord, Ch., 264; S. C. Harper Eq., 224; Miller vs. Sherry, 2 Wallace,

U. S., 237.) Wood, V. C., was of the opinion that the doctrine of *lis pendens* is that the purchaser, pending a suit, is to be bound by the result of the suit just as much as if he was a party to it.

What is sufficient to put a purchaser upon inquiry is good notice. (See U. S. Registry Laws.) Notice, such as men commonly act upon in the ordinary affairs of life is sufficient. (3 Met., 405; 11 Mich. 256 (*ante* 28 note); see 18 Peters, Iowa, 119; Sugden on Powers, 538, 542, 570 and 571.)

The effect of a successful litigation in subordinating the title of a purchaser, pending a litigation, to the rights of the plaintiff as established in the suit, rests not upon the principles of the Court with regard to notice, but on the ground that it is necessary to the administration of justice that the decision of the Court in a suit should be binding, not only on the litigant parties, but also upon those who acquire title from them during the pendency of the suit; such a purchaser need not be made a party and will be bound by the decree which shall be made. (2 Story Eq. Jur., §908; 2 Johns. Ch., 444 and 445; 7 C. E. Green, 581.)

It was said by Senator Colden that the doctrine of *lis pendens* applies only when a third person attempts to intrude into a controversy by acquiring an interest in the property in litigation pending the suit. [4 Cowen. 678-9.] A purchase *pendente lite*, though without actual notice and for valuable consideration, shall be set aside. "*pendente lite nil innoventur.*" Though this rule of equity is said to be a hardship, yet it is in imitation of the common law, where in a real action, if the defendant alienates pending the writ, the judgment will over-reach the alienation. Thus, acts of the Court, as the commitment of a hardship and in a cause pending, are to be taken

notice of by every one at his peril. [Hilliard on Vendors, 416, §§ 16 and 17, p. 417.]

The rule of law as to purchases of the subject-matter of a suit pending the suit is: that he who purchases during the pendency of the suit is held bound by the decree against the person from whom he derives title. The litigating parties are exempted from taking any notice of the title so acquired, and such purchaser need not be made a party to the suit, and hence rises the maxim, "*pendente lite nihil innoventur*," the effect of which is not to annul the conveyance, but only to render it subservient to the rights of the parties in the litigation. [Story's Eq. Jur., §§ 405 and 406; 2 Story's Eq. § 908; Story's Eq. Pl. §§ 156 and 161; Bishop of Winchester vs. Paine, 11 Vesey, 194 and 197; Metcalfe vs. Pulvert, 2 Vesey and B., 205; Garth vs. Ward, 2 Atk., 175; Briscoe vs. Bronaugh, 1 Texas, 333; Lee vs. Salinas, 15 Texas, 497.)

In all these transactions, sales and purchases of Blunt and Insley, and their co-defendants, with Whipple and Dickerson, there was privity in design and community of interest between them all, and the facts clearly show that the defendants in this suit were and still are privies to the former suit by reason of their purchase *pendente lite* and otherwise.

The situation of the defendants is that of privies to the former suit of Ambler vs. Whipple and Dickerson, their purchase having been made of the trustee and his assignees during the pendency of that suit, and the inconvenience of making them parties defendant upon that record may be well understood upon an examination of the facts in the case as follows: The suit of Ambler vs. Whipple and Dickerson was brought January 4th, 1870, decided by the Chancellor at the special term

of the Supreme Court of the District of Columbia, June 27th, 1871, and on an appeal to the Court sitting in General Term, December 3d, 1871, and the defendants purchased said trust property December 23d, 1871, twenty days after the decree of said Court in favor of Whipple and Dickerson, and eighteen days after complainant had perfected his appeal to the Supreme Court of the United States. Thus by purchase *pendente lite*, and with notice, they invaded the trust and intruded themselves upon the subject-matter of the litigation, and are bound by the final decree in that behalf. "There seems to be no exception to the rule with respect to incumbrances, or purchasers being such after bill has been filed and served and registered, as a *lis pendens* they will be bound by the decree, and need not be made parties to the suit, whether the purchaser have notice of them or not, for an alienation pending a suit is void, or rather voidable." [Walker vs. Smallwood, Amb. Reports. 676; Gaskill vs. Durden, 1 B. and B., 309; Gentle vs. Ward, 5 Atk., 175; Metcalf vs. Pulvertuft, 2 V. and B., 207; and see Massey vs. Batwell, 4 Dr. and War., 68; Long vs. Bowring, 10 Jur., N. S., 668.] Generally speaking, an assignee under a voluntary assignment *pendente lite* need not be brought before the Court, for every person purchasing *pendente lite* is treated as a purchaser with notice, and is subject to all equities of the persons under whom he claims in privity. [Story Eq. Pl., §§ 156 and 351; 1 Story Eq. Jur., § 406; Sedgewick vs. Cleveland, 7 Paige, 287; Vanhook vs. Thockmorton, 8 Paige, 33; Cooke vs. Mancious, 5 Johns, Ch. 93; Murray vs. Borton, 1 Johns. Ch. 577 and 581, and numerous cases follow in this note; 1 Daniells Ch. Pr., 280.]

Lis pendens in this case is notice to the purchaser of the pendency of the suit, and that the equities were

spread upon the record, of which every one acquiring title must abide by and be held as privy to the decree. The defendants here purchased the trust property of the fraudulent trustee and his confederates with actual and constructive knowledge of the suit pending between the *cestui que trust* and the defaulting trustee, and with this notice they became the vendees of the fraudulent assignees of the trustee, and are chargeable with the same equities as the original wrong-doer ; therefore, the plaintiff holds that these demurrers are but to evade the law and suppress the fraud, without invoking a single principle of law to which the defendants are entitled.

A decree or order of the Court of Chancery determining a matter of right is good evidence as to that right, not only against the party against whom the decree was made, but against all those claiming under him [Burough vs. Whichcote, 5 Bro. P. C. Ed. Toml., 595; Nowle vs. Bruce, 2 C. P., Coop. t. Cott., 225; 1 Greenl. Ev. §§ 522, 523 and 536; Phillips, Ev., Cowen & Hill's Ed. 1839, p. 358, note 639, in *ibid*, 915, *et seq.*: 1 Daniells Ch. Pr., p. 867.]

The decree of the Supreme Court against Whipple and Dickerson is filed in this cause, and stands against the defendants as claiming titles under them.

The course of the defendants in dealing with this property and their aid of the fraudulent trustee has placed them in the situation of *mala fide* purchasers, and by their own acts they are estopped from a demurrer, and in fact from answering, except for the purposes of discovery, as the fraud is proved upon the record, and they are privies to the transaction, purchasing *pendente lite*. A few applications of the law on estoppels, therefore, will be appropriate to show that the defendants are by law prohibited from interposing in this case de-

murrers to fraud, collusion and conspiracy, which, so far as the demurrers are concerned, stands confessed:

The rule is, that if the defendants purchased of and paid the whole amount of the money to the trustee, who had fraudulently committed a breach of the trust, the defendants are estopped from denying it. (Big. on Es., p. 523.) "The defendant ought not to be admitted contrary to his own acknowledgment and deed." (Big. p. 223.) "Estoppel is raised by acquiescence of defendant in unlawful act." (Big. 523)

The defendants here purchased from Whipple and Dickerson and their confederates, Blunt and Insley, and paid the amount to the trustee, or a considerable part thereof, or to his agent, as far as the plaintiff is advised and have acquiesced in the fraud for over ten years. The breach of the trust was made by Whipple more than two years prior to the purchase and payment of the money, and the defendants had knowledge of the fraud, and participated in Whipple's wrongful transactions, and their denial is met by this well settled rule, and they now seek to indefinitely continue the fraud.

The defendants have, in all their acts, and by deed of purchase, acknowledged the title of Whipple and Dickerson, and it is now inconsistent for them to invoke the partnership of Whipple and Ambler for their protection which they have, throughout all this litigation denied as existing, and which, by their acts, they have treated as a nullity, and under which they were not responsible. A party is estopped from showing the truth when he has by some act or declaration acquiesced in an assumed state of things, and by such acquiescence the situation of the other party has been altered to his prejudice; he is estopped from setting up the irregularity by way of defense. [Big. 538.]

The court also remarked that the defendant was, in the eye of the law, affected with notice of the conveyance from Williams to Ives through the recorded mortgage to the former from Ives, the defendant having knowledge of the facts at the time of the purchase. [Big. 539.]

In equity, therefore, when a man has been silent when he ought to have spoken, he shall be debarred from speaking when conscience requires him to be silent. [4 Hall v. Fisher, 9 Barb. 17, 31; Parkhurst v. Van Courtland, 14 Johns. 15, 43; Moulton v. Moulton, 1 Wend. 625–666; Big. 501.]

Fraudulent conduct and gross negligence as estopping the defendant and subjecting him to damages. The proceedings in a court of record are constructive notice to the whole world. (Big. 545.)

XIII.

It is alleged and shown that the purchase of Blunt from Whipple was *not* an innocent purchase from an innocent vendor by an innocent vendee; that the sales of Whipple and Dickerson to Blunt and Insley for the State of Missouri were not made by innocent vendors to innocent vendees, and that the negotiations with and the sales to the Missouri Liquid Fuel and Illuminating Company by Blunt and Insley, and by Whipple and Dickerson were not *bona fide*, as by innocent vendors to an innocent vendee, and that the sale by Blunt and Insley to said company in which they became corporators and directors, and therefore both *vendors* and *vendees* was *not bona fide*, but *mala fide*, and was merely the substitution of confederate partners of Whipple and Dickerson to screen the insolvent condition of Whipple and Dickerson, and to extend the fraud on Ambler; and the purchase by said company of the pretended rights of Whip-

ple and Dickerson to the improvements made and to be made on said invention was another act of fraud on the part of these defendants to fortify the title they had surruptitiously and fraudulently acquired from Blunt and Insley of the trust property, to the damage and injury of Ambler; and all these acts were done with a full knowledge of the said suit and the state of things, and of the equitable title of the plaintiff, the beneficiary of the trust.

If a bill is filed for the execution of the trust, a sale cannot be made without the leave of the court. The jurisdiction to restrain in such cases rests upon the breach of the trust. [7 How. 428; 1 Jur. N. S., 974; 1 Eq., R. 348.]

All the trustees should see that the sale is duly made, for they will be responsible for the act of any to whom they delegate the duty. [§ 8, Pri. 166–7.] For where several trustees sell, although there is the usual clause that each will be liable only for his receipts and defaults, yet if they allow one of them to receive and retain the purchase money they will be answerable for any loss occasioned by his dishonesty or insolvency. [14 Peters, U. S., 166.]

As soon as a trustee is fixed with knowledge that his co-trustee is misapplying the money, a duty is imposed upon him to bring it back. [Sugden on Powers, 176.]

XIV.

And as an evidence of the fraud in these transactions there is adduced the facts and elements going to show the combination between Whipple and Dickerson, decided by the Supreme Court of the United States to be fraudulent, and admitted so to be by the Court below; and of Blunt in *voluntarily* accepting the transfer of *four*

States without consideration from Whipple, the trustee of Ambler; the double transfer from Whipple and Dickerson to Blunt and Insley, of the State of Missouri —the latter being simultaneous from Whipple and Dickerson and Blunt and Insley to the Missouri Liquid Fuel and Illuminating Company; the sale of Whipple and Dickerson of all improvements for the nominal consideration of five dollars; the large number of sales made, as shown by the public records, and the appropriation of the proceeds by Whipple and Dickerson and Blunt and Insley; the character and extent of these sales in manifest fraud of the rights of Ambler; the fact that, in the case of the Missouri Liquid Fuel and Illuminating Company, the defendants Blunt and Insley, acted as both vendors and vendees of the franchise covered by and chargeable with the trust, with a full knowledge and timely notice of the state of things, and of the connivance and collusion of these defendants, and each and every of them, with said Dickerson and Whipple in making application for and obtaining *ex parte* reissues of said patents Nos. 95,665 and 102,662, as and for the purposes aforesaid.

XV.

That the Missouri Liquid Fuel and Illuminating Company was incorporated upon said letters patent Nos. 95,665 and 102,662, December 23, 1871, just twenty-one days after the Supreme Court of the District of Columbia had decided the case against plaintiff in the case of Ambler vs. Whipple and Dickerson, and after Ambler had given notice of appeal to the Supreme Court of the United States, and which appeal was duly prosecuted and decided in his favor as aforesaid.

XVI.

It is further shown that Whipple and Dickerson did deal in relation to said patents directly with the Missouri Liquid Fuel and Illuminating Company, and that said company did deal directly with them in the fraudulent transfer of rights belonging thereto, with full knowledge and timely notice of the state of things; of the partnership between Whipple and Ambler; the trust created in Whipple by Ambler; the breach of the trust by Whipple and his confederacy with Dickerson, whereby the patents they bought were obtained and are now held; of the litigation in relation thereto pending at the time, in which Ambler sought to and did assert and maintain his rights to the trust property by final decision of the Supreme Court of the United States in his favor as aforesaid.

XVII.

That these defendants had full and lawful notice of *all* these transactions, both actual and constructive; and this notice, alleged in the bill and admitted by the demurrers, constitutes a complete bar and an absolute estopped to the interposition of general demurrers going to the whole equities of the bill, without plea or answer denying the fraud and the specific and overt acts upon which the allegations of fraud are founded.

Demurrers.

A general demurrer does not lie unless it is clear that the bill will be dismissed at the hearing. (1 Daniells, 543.)

In every case in which the bill specially charges fraud or combination, a plea to such part must be accompanied with an answer fortifying the plea and especially denying the fraud and combination and the facts upon which

the charges are founded. (Story Eq. Pl. § 441 (3d ed.), note 6; 1st Daniells, 543, note 2, 32 Eq. rule.)

A demurrer to a bill must be founded upon some strong point of law which goes to the absolute denial of the relief sought, and not on circumstances in which a minute variation may incline the Court either to grant, modify or refuse the applications. (1 Dan., p. 543, note 6; Verplank vs. Caines, 1st Johns. Ch. 58.)

Demurrer admits facts to be true. [1st Daniels, 544.]

And if any part of the bill is good and entitles the plaintiff either to relief or to discovery, a demurrer to the whole bill cannot be sustained. [1st Daniells, 547; see 1st Harrison Ch. Pr., 7th ed., 414; see Higginbotham vs. Warren, 6 Gray, 562; Brockway vs. Capp, 3 Paige' 239], and a long list of authorities might be further cited, but it is a proposition without question. Mr. Justice Putnam said:

"We adopt the old rule of pleading in equity, that as a general demurrer to the whole bill, if there is any part, either to the relief or discovery, to which the defendant ought to put in an answer, the demurrer, being entire, ought to be overruled;" and again: "Where fraud is made the ground for the interference of this court, a demurrer will not hold." [1st Daniells, 552.]

In Howell vs. Ashman [1 Stockt., N. J., 82,] it was held, that when the defendant is charged with a fraud, and that he has procurred a title fraudulently and is fraudulently setting it up to defeat the plaintiff, the Court of Chancery may compel such fraud-doer to disclose the fact alleged as a fraud and all the circumstances attending it, in order that the court may determine whether these circumstances establish the fraud; and it is a proper object of a bill of discovery to ascertain, in a case where the defendant's title can prevail only upon

the ground of his being a *bona fide* purchaser without notice of the plaintiff's title, whether he had such notice, and to call upon him to disclose all the circumstances which may to to probe his conscience upon that point. [1 Daniells, 570.]

A demurrer cannot be good in part and bad in part, which would be the case if a demurrer, professing to go to the whole bill, could be supported by the allegation of a ground of demurrer which applies to part only. [1 Daniells, 589.]

A demurrer cannot be good in part and bad in part, so that if a demurrer is general to the whole bill and there is any part, either as to the relief or the discovery, to which the defendant ought to put in an answer, the demurrer, being entire, must be overruled. [1 Daniells, 583–4, note 1,] which continues as follows: "It is a general rule that a demurrer cannot be good as to a part which it covers and bad as to the rest, and therefore it must stand or fall together." [Story Eq. Pl., § 443; Higginbotham vs. Barnett, 5 Johns. Ch., 184; Burns vs. Habett, 29 Maine, 272–3.]

"A demurrer will not be good if it says generally that the defendants demur to the bill. It must express some cause of demurrer, either general or specific." [1 Daniells, 586.] A general demurrer, without any special cause assigned, has the effect only to turn the inquiry upon the equities of the bill. [10 Ala., 305; 1 Daniells, 305.]

Nor can he, after a demurrer to the whole bill, demur *ore tenus* as to part. [1 Daniells, 589; Sheppard vs. Lloyde, 2 Y. and J., 490; Harr Ch., 227.]

In hearing a demurrer the argument is strictly confined to the case appearing upon the record; and, for the purposes of the argument, the matters of fact stated

in the bill are admitted to be true. [1 Daniells, 596, note 8.]

In a bill filed by the board of supervisors of a county against a drainage company to recover the proceeds of drafts which had come to the State from the general government and swamp or overflowed lands sold by the latter after their selection, and which had been obtained from the State by the defendants, it was alleged that the secretary of the drainage company obtained the drafts from the State by some fraudulent pretense, the character of such pretense being unknown to the complainants, and that the secretary converted the drafts into money and paid it over to the company; held, upon demurrer to the bill, that, although the circumstances attending the fraud were not known, yet, the allegation was as full as could be made, and this was admitted by the demurrers, and was deemed sufficient. [1 Hill Ch. Pr., 371–2.]

It would seem superfluous to cite more authorities upon principles so universally accepted as those laid down in the investigation of this case, and their application is too obvious to question, and the facts charged in the bill evidently come within the scope of their interpretation; and that the defendants are found in the situation of purchasers of trust property, of a fraudulent trustee and his confederates, is a fact admitted upon the face of the record.

That Whipple instituted a systematic scheme to defraud the complainant is undisputed, and that for this purpose he called in Dickerson, and subsequently Blunt and Insley. Whipple and Dickerson, in the fall of 1871, make their appearance in St. Louis and commenced the exhibition of the invention of the complainant, under the firm and in the name of Whipple and Dickerson,

Blunt and Insley co-operating with them about nine months after suit brought by Ambler in the District of Columbia. The machine gave such evidence of success, especially in the manufacture of iron, that the other defendants were induced to experiment with them, and construct machines and put them in operation in the very work in which some of the defendants were, and still are, owners or managers; and on or about the 23d of December, 1871, articles of association were formed, and the right to the State of Missouri was sold to the defendants, and an incorporated company was formed by them upon the invention of the plaintiff, and his trust property, without his knowledge or consent, during the pendency of a suit with the trustee in and about the trust, and that the defendants joined in the enterprise with Whipple, knowing plaintiff's equitable right and Whipple's breach of the trust, and in utter disregard of these equities and rights, they aided Whipple in placing before the world a fraudulent title, and by commending it to the public, and indorsing the source of their own title, and the channel through which it came, with full knowledge of Whipple's fraud; they aided and abetted therein, and in the conflict between Whipple and plaintiff, about this very property they were dealing with; and it is significant that these individual defendants did not purchase or consummate the purchase, and form said company, till after the Supreme Court of the District of Columbia had decided adversely to plaintiff, when they were swift to conclude it, just twenty-one days after that disgraceful event. The inevitable conclusion is that they accepted Whipple's success as assured when he had passed the Supreme Court of the District of Columbia, but they conveniently ignored the plaintiff's appeal to the Supreme Court of the United States, where Whipple was not successful.

XVIII.

It is also shown that the patents 95,665 and 102,662, were surreptitiously applied for and fraudulently obtained by Dickerson and Whipple upon the invention of Ambler, upon three interference trials in the Patent Office of the United States, resulting in favor of Ambler as well as by the decision of the Supreme Court of the United States, which declare and decide distinctly on the ground of fraud in the defendants, and not that Whipple had a right to surreptitiously apply for and fraudulently obtain letters patent of the United States, upon the invention of Ambler, and set them up against Ambler by virtue of the contract made with Ambler, as held by the Court below in sustaining these demurrers. The Supreme Court decide that both Whipple and Dickerson are held as trustees for Ambler to the extent of one-half the patents so applied for and obtained, and of the proceeds received and to be received therefrom, to the extent of *one-half;* Whipple, because of the direct trust created in him by Ambler, and Dickerson by reason of the trust raised and created in him by operation of law, as clearly defined by the decision of the Supreme Court of the United States in the case of Ambler v. Whipple and Dickerson.

XIX.

The Supreme Court further decide that the memorandum of partnership agreement of May 24th, 1869, and the assignment in trust of May 25th, 1869, taken together, set forth and define the rights of Ambler to one half interest in the patents procured, and these instruments of writing were duly recorded in the Patent Office as aforesaid, and were well known to these de-

fendants when they combined and conspired with and bought of Whipple and Dickerson and Blunt and Insley in fraud of the rights of Ambler, and said instruments were made exhibits in the suit brought by Ambler as aforesaid, and of which these defendants had notice.

XX.

That defendants knew of the existence of said suit when they bought, and that it was actual notice of all the material allegations and exhibits contained therein. And that there are many other facts only known to the defendants in regard to their dealings with Dickerson and Whipple and Blunt and Insley and the parties in question, which would go still farther to connect them in collusion with Whipple and Dickerson in this scheme of fraud, combination and conspiracy; and upon these facts alleged in the bill the plaintiff prays discovery.

When it is the duty of a person to demand the production of title deeds he will be held to have notice of all the facts of which the production would have informed him. (26 N. Y., p. 18; 30 Beav. 509; see Sugden V. and P. Ch., 24, where the whole subject of notice is discussed at length and the cases examined. Bispham's Eq., § 269, p. 263.) The third class of cases includes those in which notice is given by registration of conveyances and by *lis pendens;* the former depending upon statutory registration, the latter upon a general principle of law which discourages alienation of the subject matter of the suit pending litigation.

The doctrine of constructive notice under the recording acts is one which of course depends, both in England and in this country, upon statute, and in general terms is simply this: That where an instrument which is en-

titled to be recorded, is duly executed and acknowledged, and is recorded in the proper territorial limits, such a registration is notice of the contents of the instrument and of all legal and equitable rights and titles created thereby to any person claiming from or under the same grantor, by virtue of any title which existed in him at the time of the date of the duly recorded conveyance. (See B. vs. C.; 13 Allen, 50; 2 Sug. V. and P., 539, 8 Am. Ed.; Bispham's Eq., § 270, p. 263.)

The letters of co-partnership between Whipple and Ambler, and the assignment in trust from Ambler to Whipple, May 24th and 25th, 1869, were recorded in the Patent Office on the day and date of their execution, and were therefore constructive notice to the defendants.

The records of the Patent Office are made by the act of Congress the proper and only place for the recording of all instruments conveying rights under a patent. (See acts 1836 and 1875.)

XXI.

The defendants *knew* they were purchasing said property and franchise covered by and chargeable with a trust, and in violation thereof, and in fraud of the equitable title of the beneficiary of the trust, of a fraudulent trustee and his confederates, of which they had notice, both by the records and of the pending suit in relation thereto and otherwise.

XXII.

The defendants well knew that the consideration paid, or covenanted to be paid by them to Whipple and Dickerson and Blunt and Insley, was *not* moving to the

franchise or estate held in trust by Whipple for Ambler. They did not see to its application, but dealt recklessly with irresponsible men, whose manifest design was hostile to the trust they were in law and fact bound to protect; and they conspired with Whipple and Dickerson to promote and further the fraud by giving them all the support, credit and currency they could by practical endorsement and co-operation to enable them to suppress and ignore as well as bar and destroy the rights of Ambler; and in this combination of elements, and these facts of wrong-doing on the part of these defendants in dealing with the direct trustee of the plaintiff and those conspiring with Whipple and Dickerson to defraud Ambler, they not only become constructive trustees with Dickerson, but co-trustees with Whipple, and jointly and severally liable for the fraud of Whipple and Dickerson on Ambler, and there is no lawful enforcement of a contribution between them.

"Where the breach of trust is such as amounts to a wrongful act, as for instance when there has been a fraudulent alienation of the trust estate, every trustee is separately liable, and there is no contribution between them, but each case is distinct, depending upon the evidence against each party." (Hill on Trusts, p. 814, § 520.)

"When a trustee has violated his trust by an illegal conversion of the trust property, the *cestui que trust* may follow it into whosoever hands he may find it, not being a *bona fide* purchaser without notice." (Oliver vs. Piatt, 3 Howard, 333.) Where the foundation of the trust and the subject of the trust is distributed among several persons, the *cestui que trust* may call for an account in equity in whatever hands it may be

found."

A Court of Equity will hold a wrong-doer a trustee for the party justly entitled by way of remedy for the wrong. (2 How., 617).

A purchaser of a vessel from a person holding the same in trust for the real owner having notice of the trust, is in no better situation than the seller. (Scudder vs. Steamboat Company, 1 Clif. R., p. 370.)

Another large class of constructive trusts arise from purchases or conveyances from trustees or other persons holding a *fiduciary* relation to property.

It is a universal rule that if a man purchase property of a trustee, with notice of the trust, he shall be charged with the same trust in respect to the property as the trustee from whom he purchased, and even if he pays a valuable consideration with notice of the equitable title of a third person, he shall hold the property subject to the equitable interest of such person; of course a mere volunteer, or person who takes the property without paying a valuable consideration, will hold it charged with all the trusts to which it is subject, whether he have notice or not. (Perry, § 217, p. 189.)

The defendants purchased the State of Missouri of the fraudulent trustee and his assignees, and James G. Blunt took from the trustee four States for a nominal consideration, all of which was done with notice of the complainant's prior equitable title. The same section of this learned authority concludes thus: "The rule applies not only to express trusts, or those expressly declared by written instruments, but it applies to constructive trusts, or those trusts that arise from fraud. Not only can the *cestui que trust* follow property into the hands of third persons, as herein stated, but they can

follow the proceeds of it, if it is wrongfully sold, so long as the proceeds can be traced and identified. Lord Ellenborough said that an abuse of trust can confer no right on the party abusing it, nor on those who claim in privity with him. And it may be added that an abuse of trust can deprive the *cestui que trust* of no rights so long as the property can be, or its proceeds can be traced and identified into the hands of those who have full knowledge of the equity."

The authorities appear so conclusive that it leaves nothing in the case for analogy or argument, and the very purpose of the law was to make an escape from fraud and evil practices upon the rights of a beneficiary to a trust impossible. These safeguards are now invoked in this cause, and the plaintiff relies upon their authority unto this Court for the redress called and prayed for in his bill.

XXIII.

It is believed that the defendants have large sums of money or other assets resulting from said sales and purchase of said franchise, provided and set apart from payment over to Whipple and Dickerson, or Blunt or Insley, and that they contemplate said further payments in further fraud of the rights of the plaintiff and the trusts raised in his favor by the decree and mandate of the Supreme Court of the United States, unless they shall be restrained by the action and interposition of this Court; and that they likewise hold and have control of certain shares of stock in the Missouri Liquid Fuel and Illuminating Company standing in the names of Whipple and Dickerson and Blunt and Insley, or some of them, which of right should belong to the plaintiff, but which are being transferred out of his reach and may be

entirely sequestrated, unless restrained by order of this Court.

XXIV.

It is to be observed that this bill is brought to have the defendants and each and every of them declared co-trustees, by operation or construction of law, with Rodney M. Whipple, the direct trustee of the plaintiff, as purchasers of trust property of a fraudulent trustee and his associates, with full knowledge and lawful notice of the trust and upon the fraud of the beneficiary of the trust; and against these defendants as co-conspirators, to extend and continue the fraud, and the prayer for special and general relief to that end.

In order that one may claim protection as a *bona fide* purchaser, the money must have been actually paid and the conveyance taken before notice is received of the trust. If the money is secured but not paid, notice of the trust will convert the purchaser into a trustee; and so if the money is paid but the conveyance is not executed, the weight of authority is that notice of the trust will destroy the protection of the purchaser. It is held that the money must be *wholly* paid before notice. This rule proceeds upon the ground that as the purchaser is taking the transfer of a title that defeats the equitable right of a third person, he shall be held to take such title subject to all the equities that attach to it at the time it passes. If, therefore, he pays no money at the time the title passes, he has no equity to set up against the equity of a third person, and if he has notice before he pays the money, he pays in his own wrong; and so if he has paid his money but has not yet taken the title, when he receives notice he takes the title subject to all the equities that attach to it when the conveyance is

actually made to him, as he then has a right to refuse the conveyance and demand back his money. [Perry, p. 264, § 221.]

XXV.

The defendants purchased this property during the pendency of a suit in a court of record, and cast their fortunes with Whipple, and lost; that turns all their acts in relation to the trust into legal advantages and benefits for the plaintiff, as the same are awarded by the Supreme Court in favor of the plaintiff and against Whipple and Dickerson in said suit, and which decision is law and authority unto this court.

XXVI.

Taking the allegations of the bill to be true [and they must be so considered in argument upon the demurrers] that the facts are amply sufficient to constitute constructive as well as actual fraud, and it is the object and lawful province of the wide range of equity in such instances of *mala fides* and evil practice, as charged against these defendants in this bill to give the plaintiff an opportunity to prove his case by putting the questions of fact in issue, by holding the defendant to answer; otherwise the defendant could forever seal, with silence, the most incorrigible frauds, and divest trusts of the very protection the law has, through the medium of courts of chancery, with such diligent care covered them with. A bill charging fraud and combination cannot be stripped of its substance by a general demurrer. Nor is it competent, upon hearing such a demurrer, for the court to fix upon or deny the acts of fraud charged when they are locked in the breasts of the defendants, and held to remain there by the protection of such a dangerous legal guardian as a demurrer unlawfully in-

terposed. Such secrets should be disclosed to the court for an impartial scrutiny, and if the conduct of the defendant is pure, it will not have suffered by the sight of justice. It would be difficult to conceive of a state of facts more conclusive of fraud than the acts of the defendants in relation to their dealings with this trust as charged in this bill. The defendants, in their dealings with the fraudulent trustee, Whipple, with notice, are in no better situation than the trustee. "*His purchase with notice is constructive fraud upon the other party*;" and if this proposition be true, the nature of their acts is too palpable to admit of any other conclusion than that they accepted the theory and representations of Whipple's case, as tendered by him and his associates, Blunt and Insley, and thereupon they entered upon the scheme of fraud with them to evade the rights of the plaintiff in forming their plans and perfecting their organizations for the introduction, use and sale of the patents covered by and chargeable with the trust.

An agreement or contract in writing made by a person having the power of disposal over property, whereby such person agrees or directs that a particular parcel of property or a certain fund shall be held or dealt with in a particular manner for the benefit of another, in a court of equity raises a trust in favor of such other person against the person making such agreement, or any other person claiming under him voluntarily or with notice. (Perry, § 82.)

If co-trustees are jointly implicated in a breach of the trust, the *cestui que trust* may have a decree against them jointly; but he may take an execution against them separately, or he may levy an execution on the property of one, as each one is liable for the whole amount. (Perry, p. 470.)

If upon the proofs of circumstances that there had been any *dolus malus*, or any evil practice, fraud or ill intent in him (the trustee) that permitted his companion to receive the whole profits, he should be charged though he received nothing: and the same doctrine has been acted on from that day to this. [Perry, p: 500, § 415.]

If a trustee, in violation of his trust, invest the trust property, the *cestui que trust* has the option either to hold the substituted property liable to the original trust or to hold the trustee personally liable for a breach of the trust. (Brightley's Digest, p. 840, § 52.)

This opinion, however, belongs to the *cestui que trust* alone, and is for his benefit and not for that of the trustee. (*Ibid*, § 52.)

XXVII.

The demurrers cannot be sustained on the ground that Whipple was a necessary party to this suit by reason of the partnership of May 24, 1869, between Whipple and Ambler, or of the assignment *in trust* of Ambler to Whipple of May 25, 1869, because said partnership and trust were not used in the sale by Whipple or invoked by these defendants; but said sale was made to them and the property purchased by them *dehors* said partnership and in violation of said trust; and the defendants are estopped from invoking an instrument that their general conduct has barred, and that they are not willing to carry out under the general and well-settled principle that a man should not be allowed to claim the benefit of an instrument unless he is willing to carry out all its provisions. (Big. on Estoppel, p. 283.)

XXVIII.

And Whipple need not be joined as a party, because he had colluded with the defendants in dealing with the trust property in violation of the trust. "If a third party collude with one partner, the latter may (omitting such colluding partner) maintain an action against such third person so colluding." (Longman vs. Pole, 1 Mood & Mal., 223; Chitty on Pleading, 79.)

But here we are met by the most strange assumption that has ever fallen within our experience, namely: that the fatal defect of the plaintiff's case is that the contract of Whipple and Ambler still exists, and that Whipple *had* and he *now* has a right to sell; and parties desiring to purchase the trust property did purchase and can *now* purchase the same of Whipple and Dickerson and pay the proceeds to Whipple and Dickerson, and for their use and benefit, without any protection to Ambler; and Ambler has no right or power to interfere to prevent this wholesale swindle, and that a court of equity can afford no relief. That the purchaser can invoke the partnership of Whipple and Ambler for his protection from the consequence of any insolvency of the trustee and his confederate, or for any misapplication of the purchase money, and that the *cestui qui trust*—the beneficiary of the trust—has no remedy against the purchaser, notwithstanding his knowledge of all of the facts: the trust; the breach of the trust; the confederacy of the trustee with his confederate to breach the trust; the combination, conspiracy and fraud set on foot and charged; the suit pending in relation thereto in a court of record; the notice of the purchaser thereof and of all things in relation thereto, and of the rights and equitable title of the plaintiff in the property so purchased. This remarkable construction of a contract

with proper and legal covenants for the *observance* and *protection* of the parties thereto, the assumed legal effect of a violated trust, and the use a partnership can be made of to extend, further and perpetuate a *scheme of fraud, of combination and conspiracy* to swindle and defraud the beneficiary of a trust of his rights in a partnership and trust property, and afford protection to the conspirators by the very contract they have combined to destroy, stands as a means of defense unparalleled in the annals of equity jurisprudence; and we *cannot* think so monstrous an assumption can prevail in any court uninfluenced by prejudice, uncontaminated by corruption, and where justice and equity are administered according to law and the very rights of the case. If this case is an exception to all law, to all precedent, and to all authority heretofore fixed as the very foundation for the interposition of courts of chancery, then let the highest tribunal of American jurisprudence so decide, and fix the exception to establish the rule for those who may come after.

XXVIV.

It appears in the *observations* of the Court in the former case upon the demurrers, that the acts that Whipple did were simply acts that Whipple, by virtue of his contract with Ambler, had authority to do, namely, to control and sell the patent in which the plaintiff claims an interest. This conclusion of the Court is not founded upon the law or facts of the case, and raises a presumption so at variance with equity and justice, that in fact it is a misstatement of Whipple's powers. Whipple not only abandoned the partnership of Whipple and Ambler, but substituted in its place the fraudulent partnership of Whipple and Dickerson, and

thereafter all transactions and sales were made in the name of the fraudulent firm of Whipple & Dickerson; and these defendants accepted the abandonment by Whipple of the firm of Whipple & and Ambler, and the substitution of the fraudulent firm of Whipple & Dickerson, in dealing with Whipple and in purchasing the trust property of him and his confederates. Metcalf, in his carefully prepared elementary work on contracts, says: "All transactions for the benefit of the firm, or on their account, must be in the name and firm style." The form in which one partner can bind the firm is said by Baron Alderson to be "in the name of the partnership, and that only," and it was decided that where two persons carried on a business in the name of J. B., one of them was not liable on a bill drawn and endorsed by the other in the name of J. B. & Co. (See Nichols vs. Rickets, 2 El. & El. 497; Kirk vs. Blurton, 9 Mees. & Welsh. 284 and 288; Faith vs. Richmond, 11 Ad. and El. 339, and 3 P. and Dav. 187; Metcalf on Contracts, p. 122.)

XXX.

Indeed it is impossible to see how the original partnership relation of Whipple & Ambler, or the principle of *general* partnership law, in the ordinary scope of partnership dealings governing such relation, *can have any possible bearing in this case.* As here presented, the partnership of May 24th, 1869, is merged in the trust of May 25th, 1869, forming one contract, and they are so treated by the Supreme Court, and they must be so held by all other courts, and any attempt to separate them is a violation of the principles established by the Supreme Court. The property or franchise is fraudulently embezzled by the defaulting trustee, and in which he is

aided and abetted, first by Dickerson, second by Blunt, then by Insley, then by the personal defendants, and subsequently by the corporation, and all are tied and united together by a fraudulent use of the corporate laws of the State of Missouri, to form one confederated union of all, to seize and destroy the rights of the plaintiff.

XXXI.

Whether the broadly assumed doctrine of partnership should have been a bar to the suit brought and decided against Whipple, is not now the question. The Supreme Court decided *it was not*, and *that ended the matter*. Its decision is binding here, and it would not be allowable to re-open this question, even were there any occasion for its consideration. But THERE IS NOT. The gravamen of this whole case is, that Whipple did not proceed to carry out the trust reposed in him by Ambler. He did not hold himself out as making sale of grants under said patents, or either of them, or of improvements thereon, or as a partner with Ambler therein, or as trustee therefor. Nor did these defendants so purchase and deal with Whipple, and this fact was well known to the defendants, when they united their fortunes with Whipple. Had he done so, and had they so purchased, such state of facts *might* have complicated the plaintiff's right to redress. *No!* it was the very reverse of this that was in reality done. It was done by forming a scheme of fraud on Ambler, by setting up fraudulently obtained patents, adversely to the contracts of Ambler with Whipple, and in bold violation of his rights, and that, too, pending a suit brought against Whipple and his confederate Dickerson, to defend and maintain these rights. The theory of the defendants here is manifestly unreasonable, contradictory and ab-

surd, and is an unlawful effort to defeat the ends of justice. The original partnership and trust were repudiated. The collusion and wrong was *dehors* and in violation of the antecedent relations between Whipple and Ambler. The defendants repudiated the connection with Ambler. Through the patents surreptitiously and fraudulently obtained by the confederates Dickerson and Whipple, they rejected any affiliation with the Whipple & Ambler patent, or of Ambler's connection with the invention, and the proceeds of sales did not come from or move to the franchise covered by the trust, by any means or promotion of Whipple, or Whipple and Dickerson, or of these defendants. The proceeds of sales, either in whole or part, it is *not claimed*, moved to the trust estate held by Whipple for Ambler.

The very origin of this scheme was a combination and conspiracy to destroy the partnership and the trust based upon the memorandum of agreement of May 24, 1869, and the assignment in trust of Ambler to Whipple, of May 25th, 1869, and it is unreasonable to say that this, Whipple and these defendants had authority to do by virtue of these instruments of writing, defining the relation between Whipple and Ambler, or that these defendants can now come into court here, and as a means of sustaining a great wrong, or as declared by the Supreme Court of the United States, a *scheme of fraud*, invoke for their protection the partnership relations between Whipple and Ambler, which covenant with Ambler, and guarantee to Ambler an equal share of all the proceeds derived or to be derived therefrom, without showing a willingness or tendering to the plaintiff, an agrement to accept its covenants and carry out all its provisions, as by law they are required to do before they can avail themselves of the mere fact of partnership ev-

idenced therein, or of any benefits derived or to be derived therefrom, and these characteristics and *malu fide* transactions follow the scheme from Whipple to Dickerson, to Blunt to Insley, to and into the hands of these defendants who, by the fraudulent transactions and sales of this now fully declared *trust estate*, are now seized of these very patents that were concocted in fraud, fraudulently and surreptitiously obtained to defraud the plaintiff, and these acts *do not* constitute acts of fraud in the language and meaning of these defendants, but are, forsooth, *simply acts* that Whipple had authority to do by virtue of his contract with Ambler. The inevitable corollary drawn from this theory, and it must be so accepted by the defendants here, is that Whipple had a right to confederate with Dickerson, to collude with Blunt, to combine with Insley, and unite with the other defendants in one grand scheme of fraud, combination and conspiracy to swindle Ambler of the rights he held with Whipple to the amount of millions of dollars, and Ambler has no remedy in law or equity against *these* defendants for this monstrous wrong. More than *this*, if this infamous doctrine be true, Whipple not only had a right to confederate with Dickerson, but to induce him to commit wilful perjury, in applying for the fraudulently obtained patent, to join Dickerson and jointly make oath to the invention of Ambler, to suborn witnesses and corrupt courts. And further, if Whipple had a right to carry out the trust reposed in him by Ambler IN A MANNER AND FORM AS ASSUMED BY THE COURT BELOW, in the former case, the inevitable conclusion must be that he had a right to sell the coinage of Ambler's brain, the sole invention of Ambler, for over seven millions of dollars, and to appropriate the proceeds to his own use, to the exclusion of Ambler, though he solemnly

covenanted in that contract *to share and share alike with Ambler;* for, say the defendants, the acts of Whipple are simply acts he had authority to do by virtue of his contract with Ambler, and it should be borne in mind that these very sales and transfers of this trust property, and the appropriation of the proceeds of them, are among the *facts* alleged in the bill, as the acts of fraud committed by Whipple, aided and abetted by these defendants. Is there a single principle of law, a decision of any court on earth, to sustain it? It is a singular fact in this case that upon upon the argument of these *general* demurrers, requiring some strong point of law for their foundation, not a single authority of any kind was cited by the defendants or by the court below. There was a vague and doubtful allusion made by his Honor, Judge Dillon, to decisions of Lord Eldon, that such a bill would not lie; and I here put it to the defendants, with due respect to the court, to find a single decision of Lord Eldon sustaining such a doctrine upon the law of partnership, as applicable to this or the former bill, or a single authority in any country, upon which they can sustain their theory of this case, and I here pledge myself, if found, to withdraw the bill and pay the costs. They claim to have dealt with Whipple as authorized to deal for Ambler, as partner or trustee for Ambler. They were looking on when he threw it away. They knew the patents in which he dealt to be adverse and hostile to the partnership and the trust, and freely and collusively they became parties to the spoliation, and as such parties, they must themselves be decreed co-trustees before this great wrong can be righted.

Defendants don't claim under patents 92,687 issued to Whipple and Ambler as a joint invention, and which was covered by the trust created between Whipple and

Ambler, but they do claim under patents 95,665 and 102,662 which were begat in fraud, but subsequently decreed by the Supreme Court of the United States, to the plaintiff, to the extent of one half, and of the proceeds derived and to be derived therefrom. How, then, can they avail of their own wrong, plead as immunity a partnership they have combined to destroy, or invoke the protection of principles of law they have defied and trampled upon, even if they were applicable to a theory which would otherwise afford them a lawful defense?

XXXII.

That the opinion of the Supreme Court is conclusive as to the rights of Ambler and the trusts raised in his favor by the decision under the patents 95,665 and 102,662, issued to Whipple and Dickerson and sold for the State of Missouri to these defendants, and upon which the Missouri Liquid Fuel and Illuminating Company is formed and the association incorporated.

The language of Mr. Justice Miller is so very explicit not to admit of any doubt or misconstruction. It not only raises a trust in Whipple, who had betrayed the original trust under the agreement between Whipple and Ambler, of May 24th, '79, and of the assignment in trust by Ambler to Whipple, of May 25th, '69, but also in Dickerson, who was no party to the memorandum of agreement, or of the former trust of May 25th. This principle of the decision establishes the foundation and theory upon which this bill was drawn, and the prayer for relief founded, namely: that third parties other than Dickerson, who may have purchased the trust property with knowledge of the trust and Whipple's breach of the trust, or in any way became possessed of the franchise or grants under the two patents covered by the

trust, knowingly, will have a trust raised in them equally and co-extensively with Whipple and Dickerson for the use and benefit of Ambler, the patents are not vitiated by the fraud, but they are declared to relate backwards to the original trust, and the proceeds are not only traced into the hands of Dickerson and as such declared bound, but that they are so declared and held to be bound, because he had "so far knowingly connected himself with and aided in the fraud on Ambler, that he cannot resist Ambler's right to an undivided half of both the patents to Dickerson and Whipple, and of the profits made or to be made out of them." It will be seen that under the opinion and mandate of the Supreme Court the articles of partnership are treated and held as virtually merged in the trust, so that the partnership having been formed on a patent and the whole legal title to the patent having gone to Whipple by virtue of the assignment in trust to him by Ambler, dealings with the patent interest could only be had with him thereafter in his fiduciary capacity by all subsequent parties as a *trustee and as a partner*, and the partnership relation was from thenceforward and survived only as between themselves, Whipple and Ambler, but as to them, it remained *in full force and effect* for all the purposes of settlement and account, and *to share and share alike*, and with which article, or any other of the articles or covenants thereof, these defendants could have nothing whatever to do, and the theory of the defendants in relation thereto is entirely untenable, and without a single principle of law on which to rest.

XXXIII.

The opinion also treats the breach of trust as a conspiracy, holding Whipple and Dickerson jointly and

severally liable, and raises the new trust, *not* in virtue of proceeds of sales coming to their hands merely, but by reason of their original seizure and appropriation of the invention set forth and incorporated in patents 95,665 and 102,662, and of the patents themselves after they were obtained. It thus affirms the doctrine that parties who have *touched* the patents with knowledge of the fraud of Whipple and Dickerson, will be declared *co-trustees* to hold Ambler harmless and recompensed to the fullest extent for what has come to them in the shape of franchise and the proceeds derived and to be derived therefrom

XXXIV

The fact that the fraud was *dehors* the partnership and the original trust both, undoubtedly influenced the Supreme Court in entertaining and deciding the suit of Ambler vs. Whipple and Dickerson—considering the partnership as merged in the trust as to Whipple, and the confederacy with Dickerson and the alienation of the franchise as *not in pursuance of a discharge of the trust but as hostile to and destructive of it.*

XXXV.

The decree of the Supreme Court is an open decree covering the lifetime of the patents, and may be followed up and enforced in any Circuit Court of the United States on the equity side within whose jurisdiction the *cestui que trust* may find his rights to have been defrauded, and discover the parties who have defrauded the same.

A patent is an entirety, covering the whole country for the whole time of its duration. A decision on the merits, therefore, of the Court of last resort after an appeal, raising a trust in a patent, must be subsequently

capable of enforcement elsewhere, or it would be a nullity and bring the Supreme Court of the United States into contempt for utter inability to enforce its decisions. The decision of the Court here upon the demurrers is upon *res judicata* so far as rights under the patent are *decided* to vest in parties or their privies. It is complete, ample and final as in the case of Ambler vs. Whipple and Dickerson, in the matter of the trust, the breach of trust, *the original fraud and the confederacy of the parties, and those holding title under them and privy thereto;* but ramifications of that fraud can only be redressed when and where found. So far as this suit is concerned, and for the purposes of this suit, it is *unquestionably* a *res judicata.* It determined fully and finally the principle and facts on which this suit is founded, and in declaring as to Dickerson, the transaction to have been a fraud on Ambler. It further established thereby the principle that others elsewhere may be sued and held to account for knowingly participating in the same transaction. The decision of the Supreme Court negatives in its very ground-work any doctrine of contribution, and by so doing justifies this proceeding to hold confederates to a several liability, and this doctrine is supported by such an overwhelming mass of the highest authorities upon such a state of facts as are alleged and fully fortified in this case, that the original action, instead of being any bar to such present action, is its strongest inducement and legal intendment, and especially does this become evident in regard to *privies* to the former suit, and enlargements of the fraud, and systematic alienation and exhaustion of the patents by grants for nominal and fraudulent considerations of all the different States after such suit is begun and before it is ended. That conspirators with the decreed trustees may live in remote

places and be difficult to discover, but a Court of Equity, which knows no limit to its redress of fraud, and armed with the decree of the highest tribunal, will scarcely entertain the proposition that a decree had against a trustee in one district is a bar to suit against a confederate in another. That there is no intricacy in a fraud on a trust thus created, that equity will not take notice of and follow up, and the succeeding vendees are only released when shown to be subsequent purchasers for a valuable consideration without notice, or *bona fide* holding through such vendor.

XXXVI.

Between confederates in fraud there is *no contribution*, and therefore the rule has justly provided that they need not be all joined as defendants, (Equity rule 57); hence Whipple not being made a party to this suit cannot offer a good ground for the interposition of demurrers, assuming all the allegations of the bill to be true, and this must be done in the argument upon the demurrers.

XXXVII.

That the parties defendant were bound to take notice of all records of the Patent Office as well as of all pending suits affecting the title and franchises embraced in the patents, and that such notice dates from the record of the instrument and the commencement of such suits when prosecuted to final judgment.

XXXVIII.

To these grave allegations and special charges of fraud set forth in the bill, the defendants have the temerity to impose upon this Court the assumption of a general

demurrer, when their consciences *should* be made to speak and answer the plaintiff. Such a reckless disregard of the rules of this Court and of the universal law of equity, is but another evidence of the determined and continued effort of these defendants in co-operating with the fraudulent trustee of the plaintiff in the violation and breach of the trust which the operation of law raises and creates in them, that has been so characteristic of the defense to these acts of fraud and the rights of the plaintiff, from Whipple's first breach of the trust and his confederacy with Dickerson down to the present illegally interposed demurrers for their protection. It is nothing more than than a confession: HE IS GUILUY; WE ARE GUILTY, BUT THE LAW AND THE RIGHT SHALL NOT PREVAIL.

XXXVIV.

That a demurrer will not hold to a bill charging fraud without an answer or plea denying the fraud, is a well settled principle, and hardly needs anything more than a bare statement in this case, of the facts that the bill is *based* on fraud and is "*profuse*," if your Honors please, because the facts upon which it is based *are* profuse in general charges of fraud and specific acts of fraud which do constitute fraud in the defendants, and these allegations must be taken as true and cannot be denied upon the argument upon the demurrers.

It is charged that a scheme of fraud, combination and conspiracy had been formed on the part of these defendants, and it is believed by the plaintiff that the acts of the defendants as fully alleged in the bill *do* constitute acts of fraud, combination and conspiracy within the meaning of the law applicable thereto. The fraud and conspiracy of Whipple and Dickerson are fixed by the

Supreme Court of the United States and by this court, and the same facts as to Blunt and Insley may be also considered as fixed by the "observations" of this court, and it cannot now be denied by defendant, Stilson Hutchins, against whom judgment was entered by order of the court below, in the former case *pro confesso*, and the only remaining question as to the other defendants in this bill is: Have they so united with Whipple and Dickerson, and Blunt and Insley, and connected themselves with and aided in the frauds on Ambler, as to make them parties to the fraud and confederates in the combination and conspiracy with Whipple and Dickerson, and Blunt and Insley or not?

To settle this question we briefly recapitulate to the court the acts charged in the bill as specific and overt acts going to establish the same, and submit to the court as hereinbefore presented, the principles of law bearing thereon. *First*—We submit to your Honors that Ambler created in Whipple a direct trust; that Whipple confederated with Dickerson to breach, and did breach the trust reposed in him by Ambler, and that they formed a confederacy to swindle Ambler of the trust property. *Second*—That the Supreme Court of the United States have decided the question of trust, the confederacy of Whipple and Dickerson to breach the trust, and have held them jointly and severally liable and bound therefor. *Third*—That Blunt and Insley purchased of Whipple and Dickerson portions of the undivived trust property with knowledge of the trust, of the equitable title of the plaintiff pending said suit in relation thereto, with a full knowledge of the state of things, and that Blunt was a *voluntary* purchaser *with notice* and *without consideration* of *four States*. *Fourth*—That Blunt and Insley negotiated with and sold to their

co-defendants the undivided franchise covered by and chargeable with the trust for the State of Missouri, and became both *vendors* and *vendees* of the same, and that all the defendants united in fraudulently using the corporate laws of the State of Missouri to form an incorporated company upon the surreptitiously and fraudulently obtained patents issued to Dickerson and Whipple; and that, so combining, all the personal defendants did unite and form, upon said patents, (the subject matter of the trust aforesaid) the Missouri Liquid Fuel and Illuminating Company in fraud of the rights of Ambler and in violation of the trust; and that said negotiation, sale and purchase was made pending said suit, with a full knowledge of the state of things and of the equitable title of the plaintiff. Upon this state of facts as fully charged in the bill, this suit is brought, and the law applicable thereto has been fully presented, and the authorities cited at the various paragraphs to fortify the same; and all of which are respectfully submitted.

May it please your Honors, the plaintiff submits that Whipple and Ambler were joint inventors and partners for developing, using, and selling the invention, with every improvement which they can obtain from any source whatever; and not only are they partners, but Whipple, by solemn covenant, occupies a fiduciary relation to Ambler and to the partnership as the direct and express trustee of Ambler, created by and under seal, duly acknowledged and recorded in the Patent Office of the United States, the proper and only place provided by law for such registration.

It is charged and not denied, but admitted, that Whipple, for reasons of his own, disregarded that partnership and trust, and carried this very invention, and every improvement which Ambler had made and experi-

ence developed, to Dickerson; he introduced Dickerson to their workmen, in the very shops where their experiments were being conducted; he employed and paid their draftsmen and mechanics to draft and manufacture a machine which was copied from the machine of Whipple and Ambler, upon which they were daily experimenting, and to which Dickerson added nothing. He took Dickerson into partnership with him, and stipulated that it should be in the name and firm style of "Whipple and Dickerson," as appears in the assignment of Dickerson to Whipple, of Sept. 24, 1869, which Whipple accepted when he thought he had got rid of Ambler by the pretended purchase through Warrick Martin; he wrote out the specification in which he set forth, not what Dickerson had invented or known, but what Ambler had invented and reduced to form and practical application in the machine upon which the experiments of Whipple and Ambler were made; he attempted, by a suborned witness and a miserable, degraded, drivelling, fallen priest, to purchase from his partner and *cestui que trust* this patent property, which he, Whipple, still values at millions of dollars; and having by these combinations, frauds and perjuries, procured patents for this invention, which the Patent Office decides to be the invention of Ambler; they put it upon the market, deny Ambler's every right, and sell grants, privileges and licenses for large sums of money, and fill the world with wondrous accounts of its success. They not only seize and appropriate the invention of Ambler and the prestige derived therefrom, but appropriate his name and fortune. In all this Whipple and Dickerson are *not* lawful partners, as it is attempted to be made to appear, but they are co-conspirators and confederates; and all persons dealing with them in relation to said

property deal with them from the absolute necessity and operation of law as co-conspirators and confederates, and not as a *bona fide* firm acting in good faith in the legitimate transaction of their business; and such persons so dealing with them in relation to this property are touched with the fraud, and they cannot escape the operation of law in relation thereto. Dickerson, with no pretensions to being an inventor, with proof positive in the former suit that he knew nothing of the invention or the mechanical details of its construction, with no proof that he has ever put one dollar into the concern, with admissions which show him to have confederated with Whipple to perpetrate the greatest fraud upon Ambler, is permitted to trust Ambler out of his place; to have combined with Whipple and put the coinage of Ambler's brain upon the market, and from it to have received large sums of money. And we are told that he is covered with the parchment and seal of the Patent Office, and that this Court, with the whole damning tale before it, has no power to reach the conspirators. To state so monstrous a proposition carries with it its own refutation. There are a few principles so firmly founded in reason that there can be no controversy about them. One of these is, that he who by any contrivance, circumvention, fraud and chicane obtains an advantage, shall not be permitted to retain it; and another is, that he who knowingly aids and abets him is equally guilty, and equally liable to the injured party therefor.

The remedial justice offered by courts of chancery upon the authorities we interpose in this case, and which might be so accumulated as to cover the whole wide range of equity upon the subject matter and the real issues tendered by this cause of action, is so search-

ing as to pursue this fraud, its ramifications and concomitant circumstances and details, to any State or Territory of this vast country where courts of law and equity have been established for the protection of the beneficiary of violated trusts, and by a proper consideration of the law and the facts, convert the wrong-doer into a constructive trustee for the benefit of the injured party. There is nothing equivocal or uncertain in the plain language of the authorities cited; they clearly fix and establish the one grand principle of this case, namely, the pursuit of parties to a violated trust, wherever they may be found within the reach of the laws and the courts of this country, provided always that the parties are not purchasers of the trust property for a valuable consideration without notice, or hold title from a vendor who was a purchaser for a valuable consideration without notice.

There is not to be found in the books a case involving so many manifest efforts to swindle the beneficiary of a trust and to continue and extend the fraud of a corrupt and insolvent trustee, to defeat the plain mandate of the Supreme Court of the United States, and to defeat the ends of justice, as may be found *patent* in this case. Every effort has been shamelessly made to strengthen and fortify the fraudulent and surreptitiously obtained title in Whipple and Dickerson, and to destroy the equitable interest of the inventor and the plaintiff in this suit, and in these wrongs the wrong-doer has been aided and abetted fraudulently and shamefully by these defendants, with a full knowledge of the state of things. By these means they have destroyed much of the real value and character of the invention, and sought to destroy the right and true title of the patent property and franchise of the plaintiff, holding out to the world

the fraudulently obtained title of Whipple and Dickerson and Blunt and Insley against and adverse to the true title of Whipple and Ambler, and by every means of perjury and corruption to destroy and bar from all interest in the invention the rights of Ambler, who by the Patent Office is declared the sole, first, original and true inventor of the discovery they have seized and appropriated to their own use in the name of these open pirates, Whipple and Dickerson. The very name of Ambler is repudiated therein, and it is called the invention of Whipple and Dickerson, and so accepted by these defendants and incorporated in their confederate company; and if these acts are *not* acts of fraud, but simply the acts these defendants and their chief conspirator, Whipple, had authority to do by virtue of his contract with Ambler, the English language has become a babel of confusion, without meaning to the meanest understanding.

Brief and Argument of Appellant in Pending Suit.

I.

The original conspiracy has been established by the opinion of the Supreme Court of the United States, in the case of Ambler vs. Whipple and Dickerson, and we have no occasion to go behind that record, and it only remains for the complainant to show that the present defendants attached themselves to that fraudulent combination by freely and collusively joining the scheme of the original frauds.

The inquiry is, did they actually or constructively or knowingly make or form any association with Whipple and Dickerson, or their confederates, upon the subject-

matter of the property set out in the original case of Ambler vs. Whipple and Dickerson? Did they knowingly invade said suit? Did they with notice lend or give to Whipple and Dickerson aid and support pending the litigation between the complainant and the chief conspirators, Whipple and Dickerson? Did the complainant prosecute his suit to final judgment in his favor? If the affirmation of these propositions are found to exist, the conclusion is irresistable that they are co-conspirators with Whipple and Dickerson, and are jointly and severally liable for the damage and injury done equally with them.

These allegations of fact are conclusive on the defendants upon argument on the demurrer, and the remaining question for the court to determine is, is there any impediment in the law or rules of practice in Chancery that excludes the plaintiff from the relief asked for in this bill?

These rights while under the sacred care of a partner and trustee, were invaded by a fraudulent combination to destroy them, and we find these defendants with an aggressive hand co-operating and assisting a fraudulent partner and trustee. The fraudulent connection of the defendants with Whipple and Dickerson, is not only constructive as purchasers *pendente lite*, and with notice from the public records provided for registration of titles, but actual from personal knowledge as charged in the bill.

II.

The various allegations and charges in the bill are as complete and full as they could be made, with the information in reach of the complainant, and it will require rigid examination to unravel the network of disguises

in this case, and an authoritative enforcement of the facts upon unparalled and treacherous memories.

III.

The conspirators have crossed the continent in every conceivable direction and annihilated to the extent of their power the rights of the complainant in their track, and now the property is absorbed by a large number of individuals and fraudulent corporations, extending the litigation and forcing upon the complainant an indefinite contest before he can even partially secure his rights; this is to some extent the measure of damages resulting from the conspiracy.

A sufficient number of the conspirators are within the jurisdiction of the court, and we do not presume that it will be contended that the plaintiff has not the right of election in such an action.

Between confederates in fraud there is no contribution, and therefore the rule has justly provided that they need not all be joined as defendants. (Equity, rule 51.)

IV.

It is a well-settled principle in dealing with trust property that "The least concert or collusion between parties to an illegal transaction makes the act of one the act of all." (74 Penn., P. F. Smith, 24; p. 112, and this doctrine is repeated in Gibbs vs. Neeley, 7 Watts, 307, and again in McKinley vs. McGregor, 3 Wheaton, 397,) and we find the rule inflexible in the language of Mr. Justice Woodward, "That all experience proves, and the rules of evidence are founded in human experience, that if fraud is to be detected under the various cloaks it puts on, the conduct of the parties before and after the fact complained of, as well as immediately connected

with it, must be fully examined." If a demurrer is sustained to such a state of facts, could the case receive such an examination as laid down in the rule? These conspirators at no time, and under no circumstances, in form or substance, acted for Ambler but *did* fraudulently act for themselves and others. A conspiracy against private rights is far more reprehensible than a combination against the Government or a corporation, for it strikes at the moral fabric of society and turns individual trust and confidence into the coffers of dishonest and insolvent trustees; and, we are in substance by these demurrers told that they can bring to their aid in the fraud persons to receive the money and property, and there is no remedy in the civil law for such a crime. It is universally conceded by all courts that it is difficult for an individual to resist a combination of persons formed to deprive him of his rights, hence the great latitude allowed in evidence to probe the secrets of a conspiracy, and so strongly did this influence Mr. Curtis in writing his great work upon the patent law that he takes occasion to say: "A combination to defeat a patent amounts to nearly, if not quite, a criminal conspiracy."

V.

The gist of this action is the damage resulting from the fraud, conspiracy and the acts of these defendants. The question of damage is one of fact as to actual damage, and a question of law as to exemplary damages; questions that can be determined upon the final hearing. If any damage is sustained in consequence of the conspiracy an action lies though the act that was designated to be done *—was not done.* Potter vs. Gurney, 17 Mass., 186; 2d Hall, (N. Y,) 277; 7 Hill, 104.

VI.

These demurrers must show a srong point of law, clearly showing that the complainant is powerless to bring and maintain an action for damages against parties who have invaded his rights, and that the defendants are not liable as conspirators. What is required of the complainant to make his case? 1st. That a conspiracy did and does exist to deprive him of his rights and his property; 2d. That the defendants, by acquisition of title, and other acts, entered the conspiracy; 3d. That the complainant was damaged by the conspiracy. If these three propositions are found to be true, then there is but one question at the disposition of the court at the final hearing, and that is to ascertain the measure of damages and issue execution.

VII.

That a conspiracy did exist is finally disposed of by the decision of the Supreme Court of the United States in the case of Ambler vs. Whipple and Dickerson. They are tried as confederates, as conspirators and fraudulent trustees and are held liable on that account. That the defendants fraudulently acquired title *pendente lite* is shown in the record, and that they had full fellowship with the original conspirators will be shown in the proof and by the record evidence in this case. The damage is a question of fact; and the doors of Chancery must always stand open for such inquiry and investigation. These defendants made fraudulent purchases and contracts with the conspirators Whipple and Dickerson, with knowledge that no part of the proceeds moved to the complainant, but, on the contrary, they devised schemes by which the proceeds were to move to Whipple and Dickerson, and their confederates, to the entire

exclusion of the complainant, and which scheme was most remarkably successful.

VIII.

We are not required in discussing the question of law upon the demurrer, to expose any more facts than is alleged in the bill. The issue is as to some strong point of law going to the entire substance and equity of the bill; some objection that is apparent upon its face, some legal objection that would not entitle the complainant to recover, supposing all the facts to be proved; these objections must be legally and successfully urged, in order to overcome the *prima facie* case made in the bill.

IX.

We have shown unto your Honors that two or more persons formed a scheme of fraud and conspiracy on the interests and property of the complainant; that that conspiracy has been established; that the defendants by fraudulent purchase and contracts, and other overt acts, entered the conspiracy, and became active and co-operative members in furthering the general design; that in view of the demurrer the innocence of the defendants *cannot* be presumed; we show that the complainant has been damaged, and that the defendants are parties to the spoliation and injury complained of, and that their acts of fraud, collusion and conspiracy are intelligently set forth in the bill, and the connection of the defendants with the original conspirators is ample and complete. To say a court of equity has no remedy for such a fraud and conspiracy, is to open wide the doors of chicanery, to despoil the widows, orphans and beneficiaries of the land, and for this purpose a demurrer would have to receive a new interpretation and perform other functions in legal construction and equity proceedings.

Whipple and Dickerson fraudulently transfer the trust property to Blunt, and Blunt and Insley, and they *all* transfer the same property to and contract contemporaneously with a corporation known as the Missouri Liquid Fuel and Illuminating Company, in which some of the defendants were original corporators and stockholders, and all the defendants became directors, either at the formation of the company or subsequently thereto, and this corporation was formed solely and exclusively upon the property invaded by the conspiracy, and the fraud was known to the defendants long anterior to their association as a corporate body, and without hesitation and with willing hands they violently seized the rights of the complainant, and insist that a court of equity can give no relief; indeed with these facts clearly set out in the bill, we are told by this demurrer "that the bill "shows no equity nor presents any ground for equitable "relief."

X.

May it please the Court, we repeat, the present bill is unincumbered with the objections to the former bill before the Court. It is an action on the case in the nature of a conspiracy against the individuals forming the fraudulent association of the Missouri Liquid Fuel and Illuminating Company, not as the fraudulent incorporators of said company merely, but as conspirators in purchasing an equitable title from a fraudulent partner and trustee, upon which to found said company and further the conspiracy.

XI.

Our faith in the administration of law is not shaken by the presumption of the defendants; they have lodged their acts of fraud and concealment voluntarily into

the lap of Justice, and she will right her cause, over which for ages she has stood guardian. If it please your Honors, it is *not* unreasonable that we express some feeling; it is not unreasonable that we have some apprehensions; it is not unreasonable that we hope for and expect *justice*; and yet we admit it is hardly unreasonable that the Court should at first look upon our allegations with some discredit, as the magnitude and extent of such a conspiracy on a patent is unknown to equity jurisprudence.

XII.

The demurrer denies the right of this cause of action, as made by the bill, and being general, it goes to the whole equity; therefore the fraud of Whipple and Dickerson and these defendants is attempted to shifted upon some mythical defendant, just who or what we are not advised, as they pretend to the most consummate ignorance of all matters pertaining thereto, and have no recollection of transactions involving thousands of dollars of money in a single day, or of the incorporation of a company with a subscribed capital stock of five hundred thousand dollars. This remarkable deficiency in memory upon such important transactions forces the irresistible conclusion upon the mind that the defendants have misgivings as to the honesty and propriety of these transactions.

XIII.

We find a portion of the property affected by the conspiracy within the jurisdiction of the Circuit Court for the Eastern District of Missouri in the possession of the defendants, claiming title under Whipple and Dickerson, who have been shown to be conspirators and fraudulent conveyancers of the rights of the complainant, of which these defendants had notice. The large

sums of money realized by the chief conspirators have been invested in construction companies and building railroads in the State of Illinois, the bonds and stock of which have been hypothecated to raise money to complete the road. The parent company of the construction and railroad companies is the National Gas and Iron Company, formed upon the very property covered by this conspiracy, all of which was well known to these defendants, and they combined to keep this information a profound secret from the complainant, and in the interim of the litigation, the chief conspirator—Whipple, became a fraudulent bankrupt and passed property for a nominal consideration into the hands of parties used as a cover to defeat any execution against him; and, we insist that the defendants were liable for the insolvency or dishonesty of their confederates in the waste or loss of the assets and property affected by the conspiracy.

XIV.

The law imposed upon the defendants a duty when the property was offered to them, which was to investigate the title, and if they purchased disregarding this precaution, they did so wilfully and collusively and are liable for their neglect to any party whose rights have been invaded. An inquiry would have shown on the records of the Patent Office, the partnership of Whipple and Ambler, May 24, 1869, and the assignment in trust to Whipple May 25, 1869, and upon the records of the Supreme Court of the District of Columbia, that said partnership and trust was in litigation for, and on account of the fraud and conspiracy of Whipple and Dickerson in relation to the subject matter of the partnership and trust, this notice is not only constructive but actual, as the defendants purchased of and contracted

with the fraudulent firm of Whipple and Dickerson, and in defiant hostility to the firm of Whipple and Ambler, with full knowledge of the records and the contest in the courts. A party may be held responsible even for an honest mistake, if the duty of knowing the truth is for any reason cast upon him. In such a case mistake, ignorance or forgetfulness is no excuse. Kerr 67, Bispham's Eq. § 214, p. 213. What is sufficient to put a purchaser upon inquiry is good notice. (See U. S. Registry Laws.) Notice such as men commonly act upon in the ordinary affairs of life is sufficient (3 Met. 405, 11 Mich. 256, ante 28 note, sec. 18 Peter's Iowa 119, Sugden on Powers, 538, 542, 570 and 571.) Does the conduct or plea of the defendants meet this well settled rule, as to notice, or are their acts consistent with innocent *bona fide* purchasers from an innocent vendor? We submit to your Honors that they are not; they must by answer, take themselves out of the fraud before they can lawfully be entitled to a dismissal of the bill; while the charges of fraud and conspiracy stand undisturbed, and they confess the very acts that the law defines as fraud, collusion and conspiracy. It would not be contended that the complainant had not an original right to sue any and all persons conspiring against his rights as though no partnership or trust ever existed. That is his present situation, as the decree relates back to the origin of his rights, and covers the period of litigation. See Decree Sup. Ct. of D. C.

XV.

It is not insisted upon ,that the bill does not allege sufficiently the acts that constitute fraud, but that *these* acts, by *these* defendants, were neither collusive or fraudulent; in other words *they* are to form an exception to all precedent, and escape the penalties that law and ex-

perience have imposed upon every individual for the best protection of the material interests of the community. We find the defendants in possession of the property invaded by the alleged conspiracy, and the *onus probondi* is upon them to show innocent acquisition of title, the conspiracy having been established. If they are found connected with it at all, their acts relate backwards to its origin, and forward to all damage and injury sustained by the complainant; this rule has been repeated over and over again in the past two years by the Circuit Courts of the United States in the whiskey cases. The life of a patent is fixed by law, and any fraudulent combination to defeat the rightful owner of his enjoyment to the limited term, is illegal and subversive of the interests and improvements of the day In its very nature it is precarious property, and to cloud the title and bring the patent into dispute or disrepute, is to work incalculable injury. To contest the validity of a patent is the privilege of every citizen, but to combine to destroy an equitable right in a patent is only the privilege seized by persons associated in wrongdoing. Wherever conspiracy is shown to exist (which is usually inductive from circumstances), thereafter the declarations of one conspirator in furtherance of the common design, so long as the conspiracy continues, are admissable against his associates, though made in the absence of the latter. The least degree of concert or collusion between parties to an illegal transaction makes the act of one the act of all. This rule is rigid in a criminal prosecution, and is intended to defeat the fraudulent purposes of dishonest combinations against the rights and property and beneficiaries. The rule has become so general that the authorities could be quoted in extenso; and in civil cases the complaint may be framed with less restraint upon the facts that go to

constitute a conspiracy in a criminal action. If it is conceeded by the Court that in the former case there was an original conspiracy formed by Whipple and Dickerson, and that these defendants acquired title from the conspirators with notice of property within the jurisdiction of the Court, and a majority of the fraudulent acceptors of such title are within the jurisdiction of the Court, and they all held confidential and collusive relations with the original conspirators, then there *must* be a *sufficient answer* to take themselves out of the fraud before a demurrer can affect the law of the case. The complainant appearing before the Court, *sui juris*, and if the primary acts of Whipple and Dickerson were illegal by reason of their fraudulent and collusive transfers to the defendants with notice, are they not equally guilty in accepting title from fraudulent trustees and conspirators, with notice of the complainan's equities which they had combined to destroy? Do these demurrers in any sense plead mitigation of the manifest wrong of the purchase and depreciation of this property, or show the defendants to be innocent purchasers without notice or collusion from the innocent vendor? Did these defendants stand by and see the conspirators, Whipple and Dickerson, and their confederates, appropriate the proceeds of the trust property to their own use without exertion to prevent the spoilation? The satisfactory response to this inquiry, as made by the bill, can only be shown in the sworn answer of the defendants. They neglected and failed to provide any protection to the complainant, and with the most reckless indifference looked on and saw his rights invaded, repudiated and destroyed.

XVI.

The doctrine of the civil law that *grossa negligenta*

was of itself proof of fraud or equivalent to fraudulent purpose or design, was no doubt founded in the consideration that although such negligence consists in *doing nothing*, and is, therefore, non-feasance, yet the doing of nothing, when the slightest care (or caution) would prevent a great injury, manifests a willingness differing little in character from a fraudulent and criminal purpose to commit such injury. (Robinson's Practice, vol. 6, pp. 76 and 77.) It appears to us, the most important consideration to inquire is, is the complainant *sui juris?* And, are the defendants in all legal respects sueable if, upon an established state of facts, they have become parties to an unlawful transaction? If both are true, the demurrers are vehicles of delay, and are not interposed to establish any legal right of the defendants, but to close all inquiry as to the foundation and equity of complainant's bill.

XVII.

To the title conveyed by Whipple and Dickerson there was the incumbrance of the trust in favor of the complainant, and it is incumbent upon the defendants to show that they acquired the title by absolute fairness, and that adequacy and equity characterized the transaction; that they are *bona fide* purchasers without notice of any prior incumbrance and without fraud or collusion with the primary conspirators or with each other. These exemptions from the alleged facts, that the contrary exists must be made by a denial of the acts that go to establish them in the answer of the defendants. As a matter of law we are not effected by these demurrers, and the conscience of the defendants must be probed by an answer to the special acts of fraud and collusion charged in the bill.

XVIII.

Where two or more persons engage in a fraudulent transaction to injure another, neither law nor equity will relieve them as against each other from the consequences of such misconduct. Page's Chancery Reports; Walworth, Chancellor, Balt vs. Rogers and wife, page 154; in Bleeker and wife vs. Bingham and wife, page 246 of the same learned authority, the Court held that a demurrer for want of equity cannot be sustained unless the Court is satisfied that no discovery properly called for by, or founded upon the allegations in the bill, can make the subject matter of the suit a proper case of equitable cognizance.

XIX.

The policy of the whole civil law is to give relief against fraud and conspiracy, and the antecedents to our authorities, that were wisely founded by the jurists of the old world from the earliest conceptions of justice in the jurisprudence of the Roman Empire, have followed in the footsteps of enlightenment and civilization.

Fraud and its contaminations are repugnant to law, and Courts of Equity are given extraordinary powers to suppress this evil and right the injured, and in their very nature repudiate mere technical restrictions. The liability of conspirators in criminal and civil cases is of ancient origin. And, for the protection of all classes of people in the enjoyment of their private rights, the Congress of the United States has declared the remedy for persons affected by conspiracy: "Every person who under color of any statute or ordinance, regulation, custom or usage of any State or Territory, subjects or causes to be subjected any citizen of the United States, or other person within the jurisdiction thereof, to the

deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. Revised Statutes of the United States, Civil Action for deprivation of rights, §1979."

XX.

The subject-matter upon which this conspiracy is formed is a creature of the laws of the United States, and the injured party, a citizen of the United States, has been deprived of his rights and immunities by the fraudulent use of the statute of the State of Missouri, and a fraudulent use of the law of assignments in transferring property chargeable with a trust and touched by fraud and conspiracy. The intention of Congress is obvious, and the strength and virtue of the statute rests in its manifest justice and application to public policy.

XXI.

Your Honors, we realize the extent and voluminous character of the bill, covering as it does various transactions and litigations for a period extending over seven years, and complications made by the conspirators to sequestrate and for ever destroy all evidences of the rights of the complainant in ramifications of fraud with a large number of persons, who have supported the trembling columns of this scheme, to enable its chief architect, Whipple, to remove his valuables and property from the threatening ruins. These demurrers can have no other purpose than to exclude the complainant from exposing to the Court *and the public view* the fraudulent transactions of these defendants with Rodney M. Whipple and Thomas S. Dickerson, and their confederates in this

gigantic scheme of fraud, combination and conspiracy. The Constitution and laws zealously and strictly hold to accountability any association of individuals to divest the rights of third persons by illegal combinations, or otherwise to invade an equitable right or legal title to property, and for this purpose courts are established by law for the prosecution of these rights when invaded, and *any* person aggrieved, however humble, may enter there in the name of justice, and assert his rights against the wealthiest nabob in the land. Of this right the complainant has heretofore been unequivocally denied in open court, and it is not strange that he, as an American citizen, should not only *feel* the injury done him, but that he should firmly express and make known his indignation against such manifest wrong, injustice and oppression. It is admitted he has been robbed of rights guaranteed to him by the Constitution and laws of the United States, and made to pay enormous expenses and court fees attending the robbery. *If this is right, there is no such thing as wrong.*

XXII.

This demurrer raises the discussion of facts rather than questions of law; when a demurrer speaks to the face of the bill it comprehends the bill as an entirety. When it challenges the equity it must be to the exclusion of any possible relief as drawn from the whole bill, and a demurrer must not speak a falsehood in assuming to set out the facts charged. The contract was made with Whipple and Dickerson, and Blunt and Insley by implication of law, either by oral or tacit understanding with the individuals before the formal deed was made to the company, and in case of a conspiracy such a contract or understanding is *antecedent* to a *formal* transfer wherever the formal title may subsequently rest, all

parties being touched with knowledge of the same transaction. The bill shows prior to the formation of the company that experiments had been going on at the fair grounds under the direction of Whipple and Dickerson, and Blunt and Insley, in the month of October, 1871, in which the leading defendants took an active part and became the companions and associates of the original conspirators; and defendant Hutchins used his paper in extensively publishing the wonderful results of the invention in October, 1871, over two months before the company was formed; he gave to Whipple and Dickerson high distinction as inventors and to Blunt and Insley as the owners and introducers, and he freely used some of the names of the defendants as influential men, taking an active part in the results of the enterprise. *To these golden colors in which Whipple's name was so conspicious, these defendants did not object.* In a short time thereafter they met at the Southern Hotel in response to a call meeting and books were opened for subscription of stock. James G. Blunt explained the object of the meeting and over $400,000 was at once subscribed by the individuals named in this bill; these proceedings were in pursuance of a previous agreement and were voluntary individual acts. Now let us examine what state of facts brought about this enormous transaction in so short a time. The firm of Choteau, Harrison and Valle, long previous to all of this, gave Whipple and Dickerson and Blunt and Insley, their aid and support, their influence and credit, and *free* facilities for the most practical and extended experiments. Why was this? Because any process or method that would largely improve the merchantable quality of *carbon* iron was of incalculable value to them, and to secure the monopoly they not only gave their money but risked their reputa-

tions by an alliance with Whipple and Dickerson and Blunt and Insley, the two former having been known for years in commercial circles to be notorious swindlers. The inducements held out by Whipple and Dickerson, and Blunt and Insley, were of such a character and magnitude as to overcome all prudence and caution, and were the facts not undisputed, the confidence of these defendants would seem *incredible*. They fell into the conspiracy, and the motive is not obscure. Stilson Hutchins gives the influence of his paper to the conspirators; Gerard B. Allen constructs machines for the conspirators of which he swears *there was no account kept*, but it was through some mysterious, silent understanding; Kupferle, by agreement, furnished steam fixtures for the conspirators in their experiments, and these defendants with the others, gave large pecuniary aid to the conspirators, Did the minds of these defendants meet with Whipple and Dickerson in these overt acts of collusion? Was there a common design among them all? Are these circumstances fraught with no suspicion? When we subsequently find the same individuals as a pretended corporate body clothed with title to the very invention they had combined with two notorious conspirators to seize and enjoy unto themselves.

These overt acts are shown in the record to have been committed several months before the individuals were possessed with pretended corporate powers. We show therefore that *there was an agreement or contract existing between the conspirators* Whipple and Dickerson *and these defendants*, by their union and collusion together to purchase the interests of this invention and form this identical corporation; a discovery would unfold these well kept secrets. The conspiracy was the parent, the corporation its child. This corporation is founded solely

and exclusively upon the letters patent Nos. 95,665 and 102,662, and had no existence prior to the 18th of December, 1871, and December 23d, 1871, when the *formal* deed was made to the corporation.

The real purchasers and contractors were the individuals who procured the patents to be formally transferred or deeded to the company; and, we find subsequently these *individual* contractors the incorporators of said company. Therefore, as a matter of fact, Whipple and Dickerson did contract with these defendants in their individual capacity. We show in the bill that they dealt individually with the subject matter of this suit; the precise language or terms of agreement it is impossible for the complainant to allege, when they are wrapped in the careful folds of the conspiracy, which, like all of its class, is pledged to silence and absolute muteness; and as your Honors say, "We can only judge of that by the results that followed." "What took place between them will probably never be known." The bill alleges the circumstances that surround the acts of these defendants prior to the incorporation of the company, and the many disguises that found a hiding place in that corruptible body. Would the learned gentleman have us allege some particular agreement or contract not on record, or under our control, and then call upon us for the proof of an instrument which may have been conveniently lost or destroyed (for the circumstances attending this case would justify any kind of inference?) No! We prefer the operation of law upon their conduct, *fortified by evidences of record.* Each and every one of the defendants, at the moment they entered the conspiracy, became in law and fact co-partners and contractors with each other, and are equally bound to the damaged and injured party. The conspiracy con-

sisted in the combination of the defendants with Whipple and Dickerson to do an unlawful act to the damage and injury of the complainant, and in violation and fraud of his rights.

XXIII.

The bill charges that the corporators did not follow the Statute under which they organized. If the organization did not pursue the required mandatory provisions of the Statute, the corporators are clothed with no powers as such, and their acts are resolved into individual acts, the corporation having no legal existence in law, and as a sequence, they contracted as individuals having no legal corporate life, and it was as individuals and not as *bona fide* corporators that they contracted with Whipple and Dickerson. The formal deed of conveyance to the corporation was only evidencing the contract that the defendants as individuals had previously made with Whipple and Dickerson and Blunt and Insley; that the title should be placed by *formal* deed into the possession of the corporation and in the name of the company. The essence and substance of the agreement had been made by the defendants during the process of arranging this fraudulent company.

XXIV.

We are not left to conjecture as to the object of the meeting at Parlor No. 5 of the Southern Hotel. The object of that meeting is fully set out by the defendant Blunt in the presence of Rodney M. Whipple, defendants Gerard B. Allen, Charles H. Peck, Theodore Laveille, George H. Rea, Stilson Hutchings, Charles P. Chouteau, John Kupferle, Frank Gregory, Charles P. Warner, Albert C. Ellithorpe, M. H. Insley, and others who are not defendants in this bill. The meeting was

organized by the choice of Gerard B. Allen as president, and Stilson Hutchings, secretary. After the organization of the meeting, defendant Blunt explained the object of the meeting to be:

"That it was the purpose of the owners of the patent (the assumed owners of the patent were then Whipple, [present] Dickerson, Blunt and Insley, as it will be borne in mind that the transfer from Whipple and Dickerson was not made till December 23, 1871, four days after the meeting) to relinquish all claims upon the same for Missouri to the Company, as soon as it should be formed and capable of making a legal contract therefor." And the meeting was further for the purpose of organizing and constructing articles of incorporation, which business was then proceeded with.

"Articles of association" were then drawn, which recite the *objects* of the Association, under the *Whipple and Dickerson patent*, for vaporizing petroleum and other oleaginous substances; also to license or sell *any* and all rights acquired by said company in and to said patent; and yet we are told by this most infamous demurrer, infamous because sworn to by honorable (?) men, that the corporation only committed the acts complained of, and that the individual corporators, the defendants, had nothing to do with the subject matter of the bill; or in the classic language of Mr. Shepley, a gentleman *learned* in the law, "for that said complainant shows by his said bill that the above named defendants made any contracts nor had anything to do with the subject matter of this bill and that they are therein stated to have connection therewith simply and only as being members of a corporation, which corporation made the contract, and did the acts complained of." This admission of the counsel of the cheating, swindling and fraudu-

lent character of this pretended corporation is broad enough, in the view of the learned counsel, to cover with its dark mantle of corruption its *innocent* corporators, and this is really the manner of the times. Men can combine to cheat and swindle the unfortunate, clothe themselves with the color of the Statute, form a pretended corporation, and bid defiance to law and justice; and if the beneficiary of the most sacred trust has the temerity to appeal to the courts, he is not only denied a hearing, but every technical objection is thrown in his way to wear him out and force him to leave the halls of justice. We submit, your Honors, that the complainant during the long years of this acrimonious litigation has suffered enough. It is not strange or unreasonable that he he should be indignant. In delivering the opinion of the Supreme Court, your Honors say, in referring to the sixth article of the agreement between Whipple and Ambler, "that the provision was eminently wise and necessary." And the complainant cannot see in what way he has so greatly fallen since the time that provision was prepared by him, except by the injury and injustice that has been heaped upon him; and, if that is the case, then it is proper to so consider the matter upon the final hearing as a ground and measure of damages against those who have so injured and defrauded him; but no, your Honors, we will place the measure of damages upon the ground and foundation of actual damage done him by these bold confederates in this scheme of fraud and conspiracy. We ask nothing beyond this, and this we have an undoubted right to recover of them.

XXV.

These defendants contend that there is no equity in the bill which gives us the right to recover, and yet they admit by their sworn "demurrer" that the corpo-

ration did commit the acts of fraud, wrong and injury "complained of." This admission clearly and unequivocally establishes the gravamen of our bill, and justifies our cause of action, for when fraud is charged and the fact established or *admitted*, the corporators, even when they are *bona fide* corporators of a lawful corporation, become at once individually liable for the fraud committed. It is not the walls of the edifice, or the parchment, or the soulless corporation that commits the act; the *intent* to cheat, defraud, and swindle does not rest in the marble block, or in the safe of the corporation, but in the *minds* of the individual corporators themselves.

The gentleman does, methinks, confess too much, for his assumed theory of a corrupt and rotten defense. The moment any corporation is touched with fraud, civil or criminal, it is not the *corporate body*, but the *individual body* that becomes the subject of the prosecution and the punishment. Can the corporate body commit a fraud or any other crime independent of its individual members? And, if so, in what way can it be prosecuted and punished? Shall we take the stones of their buildings to build prisons for the punishment of the *corporate body*, or shall we incarcerate their "articles of association" in some living tomb for future ages to discover, and wonder at the corruption, debasement and crime of the nineteenth century? Can the counsel point to a single case in all history where a *corporation* has been charged, convicted and punished for crime? If so, will he inform us in what wild Utopia of criminal life, and in what age of the world did he find this legal nondescript? And yet the gentleman admits the corporation known as the Missouri Liquid Fuel and Illuminating Company is the legal nonedescript found in the centennial year of our national independence. Does the gen-

tleman assume that this *company*, as a corporation, has been guilty of the *intent* to cheat, defraud and swindle the complainant? *Why certainly!* as he says the corporation, in its *corporate* character, and not the individual corporators, has been guilty of the *intent* to cheat, defraud and swindle the complainant, for these are the charges set out in the bill and complained of as among the acts of the defendants going to form the gravamen and cause of action set out in the bill, for and on account of which damages are prayed. This "corporation" is now charged with the grave offense of cheating, swindling and defrauding the complainant, by the counsel for the defendants. Now, as a good citizen, will he not, as he has told us so much of practical value and learned law in equity jurisprudence, tell us in what way this soulless corporation shall be prosecuted, convicted and punished, so that *one* criminal "corporation" may come to grief, and stand a living or dead example of the mysteries of its existence, its follies and its crimes, and prevent a repetition of rascalities covered by the color of law to protect its "corporate" members, by the sacrifice of its *corporate body* to the just indignation of the world? This is *vicarious* atonement in its purity (we would not be sacreligious,) for which we are indebted to the learned counsel. But, your Honors, this false theory of the learned counsel is soo absurd, and we pass to a more legitimate form of argument.

In the supplemental decree of the Supreme Court of the District of Columbia, rendered on the 11th of May, 1877, a certified copy of which under the seal of said Court is filed with the bill as an exhibit in this cause, your Honours will find that "It is found and determined by the Court that the said Ambler is in law and equity entitled to the one undivided half of the two patents

Nos. 95,665 and 102,662, and of all rights, interests and profits heretofore realized by the Defendants Whipple and Dickerson or either of them, or by any other person or persons acting for them or either of them, arising from the use of said patents or from sales of rights or interest thereunder or in any other manner in accordance with the decision of the Supreme Court made in this cause on the 30th of November, 1874."

It will thus be observed that the decree extends to all persons acting for Whipple and Dickerson, and it certainly will not be denied that Blunt and Insley acted for them, as set out in the allegations of the bill, and as shown by the decision of Judge Dillon in the former case, and as admitted by the demurrers, that all the defendants first acted as individuals and subsequently as corporators under the color of the Statute laws of the State of Missouri; that they were privies to the original design, and the *formal* act of conveying the title to the company as formed was only a part of the general plan and grew out of the antecedent relation of the parties in the transaction. The proposition was welcome to the mind and intent, and the legerdemain used in the formation of the company was but a complication of illegal purposes to carry out the original intent for the benefit of the individual members of the pretended corporation; and there is no rule of law better settled than that corporations founded upon unlawful and collusive acts of its corporators exists only as a corporate body in color and fraud for purposes of redress to anyone injured by the fraudulent corporation. The decree covers every transaction that has ever been made on the property covered by the trust, pending the suit and violation of the trust, and must be so treated by all courts

having comity of jurisdiction. If this bill does not carry upon its face facts and overt acts of fraud and collusion enough to entitle the complainant to relief, it would indeed be difficult, if not impossible, to so prepare a bill as to avoid technical objections to discovery and relief; but we have not in this case even technical objection to meet, as no such are made, either by the counsel or by the Court; in fact, no rule of law; authority nor precedent whatever has been cited to sustain these demurrers going to the whole equity of the bill, and which requires some strong point of law to sustain them.

XXVI.

The conclusion is therefore irresistable that the *corporation* or corporators *as such* were not the original contracting parties, but that all agreements made with the conspirators were previously merged into the names of the individuals that had subsequently characterized themselves as "incorporators" of said company. In case of fraud or conspiracy the Court can go behind the formal deed and inquire into the transactions that preceded it. The defendants cannot use corporate powers to shield themselves from personal liability, in collusion, mistake or fraud.

XXVII.

The demurrer states that the bill shows that the complainant, while affirming the sales, the sales are merely the evidences of the amounts received by Whipple and Dickerson and their co-conspirators, and as a means of accounting in damages, to the corporation as the purchaser, at the same time claims to recover from the defendants the consideration already paid by the corporation, and in a different manner than that contracted for. There is no such presumption that can be raised from the bill.

The bill charges that there were considerations moving to the conspirators before the corporation was formed. Defendant Allen was to construct and did construct machines, and was to receive stock in a company to be organized, and his account was to be adjusted by payment, part in stock, and he was to pay the residue in money for any larger amount of stock he might subscribe for. The same may be said of Kupferle. The Valles were to accept nominally $25,000 in stock for their name, and to give credit and character to the company which was to be, and was paid by Charles P. Chouteau. This suit is not for any consideration named in the deed that moved between the conspirators; it is upon broader principles. These acts relate back to the original fraudulent design upon the property, and are the individual acts of the parties, acting in no sense in a corporate capacity. Was this not an agreement affecting materially the defendants in their united scheme? The law upon this subject is too universal your Honors, to cite authorities. This is not as the learned gentleman would have us believe—a bill to recover the consideration named in the deed of conveyarce to the corporation—but is an action on the case in the nature of a conspiracy for damages upon which we have had an affirmative decree as to our original rights. it is to establish the fact that defendants did, by many individual and overt acts, aid, abet and conspirI with Rodney M. Whipple and Thomas S. Dickerson to defraud the complainant. The allegations of the bill show that the conspiracy existed antecedent to the articles of incorporation upon which the company was formed; if this is true in fact, as appears in the bill, then the corporation is but an incident or result of the conspiracy formed to give their confederacy further vitality,

by the fraudulent use of the corporate laws of the State. As to that sweeping part of the demurrer that there is no equity in the bill, we will not discuss. It is too lame an assumption to be discussed; and yet, your Honors, it *is* proper to say that the contradictory positions taken in this paper filed as a demurrer, should be clearly set out, and in order to do this we go to the bill to find the true cause of action. The bill charges and establishes by *record evidence* that *cannot* be *impeached*, that a gigantic scheme of fraud, combination and conspiracy had been, *First*, previously formed by Whipple & Dickerson, and this fact is fortified by the decision of the Supreme Court of the United States, to deprive the complainant of his rights and immunities under the patent laws of the United States. *Second*, That these defendants aided and abetted knowingly therein. *Third*, That the complainant had been injured and defrauded to the amount of hundreds of thousands of dollars in the State of Missouri, and of millions of dollars throughout the country by Whipple and Dickerson, and aided and abetted by these defendants; and, *Fourth*, That the corporate laws of the State of Missouri had been used as a color by these very defendants to further and extend the fraud in pursuit of the same scheme, combination and conspiracy first set on foot by Whipple and Dickerson at the shops of Pettit & Dripps, in Washington City, in September, 1869, and which your Honors, in rendering the opinion of the Supreme Court, defines as follows: "That Whipple, in violation of his trust to Ambler and in fraud of his rights, deliberately entered upon a scheme by which Ambler was to be deprived of the benefits resulting from success in their joint experiments. That in pursuit of this scheme he called in Dickerson, who, without having invented anything, and in a remarkably short space

of time, procurred letters patent to issue to himself and Whipple which embraced the results of Ambler's discoveries and experiments, whether they embraced anything else or not." And it is charged and established by *record* evidence that these defendants deliberately and knowingly entered upon and participated in this scheme of Whipple and Dickerson, and that they aided and abetted therein. These facts are not only undisputed and indisputable, but admitted by the demurrer in law; and in fact both admitted and denied upon its face. The bill also shows that these acts of fraud were preceded and *attended* with an *intent* to cheat, defraud and swindle the complainant out of his rights and immunities derived from the patent laws of the United States, and Mr. Shepley says that these acts "complained of" were done by the *corporation*, but not by his clients, and in the same paper *he* says and *they* say *under oath, that there is no equity in the bill;* that is to say, Charles P. Choteau, Oliver B. Filley, Theodore Laveille, Gerard B. Allen and Edwin Harrison swear, first, "That the above named defendants made any contracts, nor had anything to do with the subject matter of this bill, and that they are therein stated to have connection therewith simply and only as being members of a corporation, which corporation made the contract and did the acts complained of," and that there is no equity in the bill. And this oath is made in the face of the allegations and *record evidence* set out in the bill. If these men were poor men they would be arrested for willful perjury, for a clearer case of perjury it would be difficult to make out. And Mr. Shepley certifies "that, in my opinion, the demurrer is well founded in point of law," and for this he should be disbarred, and were he a poor man and an humble practitioner, he would be. In what way, may it

please your Honors, has the complainant fallen in his efforts at redress, so low since the decision of the Supreme Court, that his rights cannot be adjudicated in open court? Is it crime on the part of these defendants that fears the exposure that a public trial would give? This is the second time that this complainant has been denied a fair, open and public trial where by law and the usages of our courts he is entitled to have it, and, whatever may be the decision of your Honors upon this infamous paper, the complainant *hereafter* will adopt the *remedy* to which by law he is entitled. That the complainant has all the "rings" in the country against him there is no doubt; but the dawn of a noble and grand reform is opening upon the honest American people, and right to all persons, without distinction of race, color or previous condition, will be felt and obeyed, and, as the complainant has waited and labored so long, he may confidently yet hope to see his wrongs punished, his rights vindicated, and his struggles and labors respected. But this paper filed is not a demurrer, either in form or substance, but is a disguise for a plea. It pleads to the assignment, to the corporation, to the individual liability of the corporators, to the contracts, and to the affirmation of sales. It strikes at the facts of the bill, and not upon legal ground of demurrer, and is, in fact, a plea, and a plea only, and it is unattended with an answer denying the fraud.

It is, therefore, not a demurrer, but an interpolation that should be stricken from the records. There are also other matters that should be taken into consideration in the investigation of the peculiar status of this case as it is now presented to your Honors, and among which matters for the investigation of your Honors we name: *First*,—That the parties purchasing this incum-

bered property held all *formal* transfers in abeyance till the decision of the Supreme Court of the District of Columbia had been rendered against the complainant and in favor of the conspirators Whipple and Dickerson, *December 2d*, 1871. Then the doors of *Chancery* were open wide to the collusion, fraud and conspiracy charged in the bill, and these defendants then hastily entered into the same at the call of Whipple and Dickerson after that decision had been made. By this means the Court held the power to commit, inadvertently or otherwise, a great wrong, for which there is no adequate remedy, and in less than twenty days thereafter these defendants endorsed and accepted the fraud of Whipple and Dickerson, became participators therein and aiders and abettors knowingly thereof. There can be no surprise to a well-informed mind why the Supreme Court characterized this fraud as they did in both the opinions delivered by your Honors. The conspiracy charged in the bill stands confessed, but, through some juggling process, they claim to have escaped through some channel unknown to the law, or to any legitimate proceedings in equity. A pretended corporation is made the parent of this corruption, and the individual corporators are the illegitimate offspring of its adoption; or, the individuals, as conspirators, are the sponsors of this creation, and the corporation is the child of its baptism. It was conceived in dishonor, baptized in crime, and christened in fraud and corruption. Every act and indenture connected with it, is one of fraud and collusion, and it cannot properly be contended that we are either to pursue its illegitimate offspring or parentage. The certified transcript of sales from the Patent Office of the United States show that Blunt and Insley purchased *direct* from Whipple and Dickerson the trust and

patent property now in possession of the defendants under the color of a statute law of the State of Missouri, and, by a fraudulent use of the assignment laws of the United States; and that defendants Blunt and Insley conveyed to the Missouri Liquid Fuel and Illuminating Company in pursuance of a *previous agreement* the same property; defendants Blunt and Insley it cannot be denied contracted with Whipple and Dickerson as individuals and *not* as corporators of any company. They subsequently became corporators and are made defendants in this bill; and yet *under oath* it is said that they as defendants in this bill had no connection with the subject-matter of this bill. And it *cannot* be denied that the other defendants united with and joined the scheme of conspiracy to defraud the complainant, and, that the purpose was effected by the plan devised, charged and set out in the bill. That they aided and abetted knowingly, and assisted in its plans, and in the execution thereof, by giving their influence to its support and their best energies of mind to devise the safest and surest means for its accomplishment. Mr. Justice Putman says: "We adopt the old rule of pleading in Equity, that as a general demurrer to the whole bill, if there is any part, either to the relief or discovery, to which the defendant ought to put in an answer, the demurrer being entire ought be overruled, and, again where the fraud is made the ground of interference of this Court, a demurrer will not hold." 1st Daniels, 558.

The general proposition of the "demurrer" is, that the corporation did the acts "complained of" and not the defendants as individuals. We show by the allegations of the bill and by the record evidence filed therewith that these defendants were dealing with Whipple and Dickerson some time before the so-called corpora-

tion had any pretended corporate existence whatever, either by the act of the parties, or by the color of the statute, and that they dealt with Whipple and Dickerson in proper person, and Blunt and Insley dealt with them as far back as the spring of 1870; and that Blunt received four States as a gratuity, voluntarily accepted the same and entered the conspiracy; and with Blunt and Insley we find the other defendants associated and linked by their own acts as shown by the evidences of record. The demurrer does not show, or attempt to show, that the "corporation" is an indispensable party to this suit, but, that the transparent corporate body is only liable for the acts complained of, which it is admitted under oath that they have comitted. We insist that it was the individuals as conspirators who formed themselves into fraudulent corporators to conceal their acts under cover of the corporation. This is "one of the many cloaks that fraud puts on."

The very manner of issuing the stock, the suppression of all accounts, the secrecy of their plans, show that there had been a fraudulent agreement to purchase the property, which they all understood, as it will be seen that the transfers of stock must have been pre-arranged, and by this means there was an actual and implied contract to do the very things they subsequently did do. The collusion and conspiracy was the very bulwark of the transaction, the corporation a shelter to the fraud. We repeat, this paper filed, while it is called a demurrer, is only an ingenious disguise for a plea. It pleads to the assignment to the corporation, it pleads to the individual liability of the corporators, and pleads to the affirmation of the sales by the complainant. The plea strikes at the facts of the bill, and not upon legal ground

of demurrer. The counsel did not dare to put it in the form of a plea, as the defendants would then have to answer to the residue of the complaint.

XVIII.

We especially invoke, your Honors, for the vindication of our rights in this cause, the statute of the United States before quoted, (Sec. 1979 of the Revised Statutes) and ask your Honors especially to consider the same in this behalf. This statute which we again here quote for the convenience of your Honors, declares in language of the most clear and unequivocal character, that "*Every person* who under *color of any statute or ordinance, regulation, custom or usage of any State or Territory* subjects or causes to be subjected *any citizen* of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress." (Revised Statutes of the United States, *Civil Action for the Deprivation of Rights.*) And, your Honors, we humbly insist on the application of this statute to this case.

Under this statute the only questions for the Court to consider are, *First*, Is the complainant a citizen of the United States or within its jurisdiction? *Second*, Has the complainant, under color of any statute or ordinance, regulation, custom, or usage of any State or Territory of the United States, been deprived of any rights, privileges or immunities secured to him by the Constitution and laws of this country? *If so, Third*, Have the defendants under color of any statute or ordinance, regulation, custom or usage of any State or Territory, deprived him of them? And, *Fourth*, Has the complain-

ant set out in his bill the fact that he is a citizen of the United States, or does he *show* that he is within the jurisdiction thereof, and that he has been deprived of his rights under the color of a statute by a scheme of fraud, and, by a combination of individuals to deprive him of his rights, privileges and immunities secured to him by the constitution and laws of the United States.

If these questions are answered in the affirmative, then the demurrer *must* be overruled, and the defendants be required to answer the charges and facts of fraud, combination and conspiracy alleged in the bill in due form of law in equity proceedings, and *under oath* each specific act must be denied, admitted or qualified; each specific notice charged must be denied or admitted, and the cause must then be tried upon its merits.

It may be said by the counsel for these defendants, that this statute relates to the colored citizen, and was for his protection only, and that his white brother, though a citizen, or within the jurisdiction of the United States, has no part or lot therein. From the former pleadings of *these* defendants, and the pretended obtuseness of their counsel, we should not be astonished at such temerity, but we can well leave *such* an interpretation of the statute to the sounder interpretation of the Court; and we will merely add, that this statute is general, belonging *to no class legislation*, but applies with equal force, not only to any citizen of the United States, but to *all* persons within its jurisdiction, or it is *absolutely void*. The simple facts are, and they are undenied and undeniable, that a scheme of fraud and conspiracy was formed to deprive the complainant of his rights, privileges and immunities under the partnership and trust, and the *patent laws of the United States*, in which these defendants participated, and under the color of

the statute of Missouri, fraudulently formed themselves into a corporate body upon this very partnership, trust and *patent* property, as your Honors will find by reference to the articles of association of the Missouri Liquid Fuel and Illuminating Company, filed as an exhibit in this cause, and these facts alone are enough to set out the gravamen of the bill and give a foundation for this cause of action, and, the question is, *are they true?* This the demurrer, in *law* and fact admits, and they must be so treated upon the argument upon the demurrer; and if these demurrers are sustained, they must be sustained upon some strong point of law going to all the equities of the bill.

XXIX.

The demurrer says, first, as a cause of demurrer: "That the complainant has not made such a case as entitled him to a discovery or any relief as prayed for in the bill, for that the above named defendants made any contracts nor had anything to do with the subject matter of the bill, and that they are therein stated to have connection therewith simply and only as being members of a corporation, which corporation made the contracts and did the acts complained of, and it is not in any manner shown that they are, or can be, in any way affected individually by the matters and things therein complained of? This quotation from the demurrer shows either that Mr. Shepley never read the bill, or that he misunderstood the plain language thereof, or wilfully misinterpreted it. The whole tenor, language and legal intendment of the bill charges and sets out the individual liability of the defendants, not as *bona fide* incorporators in carrying out the provisions of the corporate act, but by a scheme of fraud and collusion, by the fraudulent use of the corporate laws of Missouri, and the cor-

poration is expressly set out in the bill as a fraudulent corporation existing under the color of the statute only The pretended corporation was an incident growing out of the antecedent relation of the parties. The long line of experiments with the invention at the Laclede Rolling Mills, and at the Fair Grounds in October, 1871; the building of machines; the meeting at parlor No. 5, Southern Hotel in St. Louis; the antecedent arrangements for the illegal division of the stock, and many other overt acts of fraud and conspiracy, as charged in the bill. An act of conspiracy is first an act or intent of the mind, and cannot be charged against a corporation without a connection with its individual members. In this bill the corporation is not a party, but is ignored as such and treated as a nullity, having been fraudulently incorporated under the color of a statute of Missouri to deprive a citizen of the United States of his rights, privileges and immunities under the patent laws of the United States.

Is it safe, is it proper, is it just, to assume that there was no collusion, no concert of action between Whipple and Dickerson and these defendants? If not, why did Whipple and Dickerson enter upon a contract in writing on the 23d day of December, 1871, with the pretended Missouri Liquid Fuel and Illuminating Company for services to be thereafter rendered by them, for the consideration of five dollars, simultaneously with the contract made with said company with Blunt and Insley? Was not that five dollar contract for services to be thereafter rendered by them in accordance with some antecedent relation between all the parties? Why was Whipple present and acting with the defendants at Parlor No. 5, Southern Hotel, on the night of the 18th of December, 1871, when $400,000 were subscribed to

the capital stock of a company to be formed on said patents, and which was fraudulently formed four days thereafter, to wit: December 21, 1871, when the permanent organization was effected by the election of officers. In relation to this meeting the *St. Louis Times*, a paper then published by defendant, Stilson Hutchins, published, Vol. 6, No. 125, December 19, *Petroleum as Fuel*, as follows: "Formation of a stock company for the manufacture of gas under the Whipple and Dickerson patent — a successful inauguration of a great enterprise. An important meeting of business men and capitalists was held last evening in Parlor No. 5 of the Southern Hotel, for the purpose of forming a stock company, for the utilization and development of the liquid fuel recently patented by Messrs Whipple and Dickerson."

XXX.

So at this meeting, when the preliminary steps were taken for the organization of the fraudulent corporation, Whipple was present and participating therein, as he was all through the experiments preceding the same and subsequently thereto. If this bill does not show acts of fraud, collusion and conspiracy on the part of these defendants to deprive the complainant of his rights, privileges and immunities derived from the constitution and patent laws of the United States, under the color of the statute of the State of Missouri, then it is utterly impossible for human language to set out such acts of fraud, collusion and conspiracy, as would tend to establish them or reach the understanding of the learned counsel of the defendants. Mr. Justice Dillon treats this state of facts as a conspiracy and fraud, and Blunt and Insley as parties to it, and, in the case of the United States against the whisky ring, he defines conspiracy as follows:

"1. Was there such a conspiracy as is described in the indictment, and was any of the overt acts committed as alleged, in furtherance of said conspiracy?

"2. If such a conspiracy existed, was the defendant a member of it, or one of the conspirators?

"As to the first of the questions you may, perhaps, have very little difficulty. It is not necessary to constitute a conspiracy that two or more persons should meet together and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly by *words or in writing, state* what the unlawful scheme was to be, and the details of the plan or means by which the unlawful combination was to be made effective.

"It is sufficient if two or more persons in any manner, or through any contrivance, positively or tacitly come to an unlawful understanding to accomplish a common and unlawful design. In other words, where an unlawful end is sought to be effected, and two or more persons, actuated by the common purpose of accomplishing that end, work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of said conspiracy, although the part he was to take therein was a subordinate one, or was to be executed at a remote distance from the other conspirators.

"A combination formed by two or more persons to effect an unlawful end is a conspiracy, said persons acting under a common purpose to accomplish the end designed. Any one who, after a conspiracy is formed, and who knows of its existence, joins therein, becomes as much a party thereto, from that time, as if he had originally conspired."

XXXI.

By the allegations of the bill it is shown that these defendants had been dealing with Whipple and Dicker-

son in relation to this very property some time before the so-called corporation had any color of existence whatever, and they dealt with them in proper person. The "demurrer" does not state that the corporation is a proper party to the action, but in an indirect way assumes that this transparent fraudulent body, called a corporation, only is liable for the acts complained of, and this assumption is suggested in face of the bill which is alive with allegations and charges of individual fraud in these defendants, and of the fact that they did deal directly with Whipple and Dickerson preparatory to and preceding the fraudulent formation of the company to secure the results of this illegal combination of individuals. In all cases where a man has a temporal loss or damage by the wrong of another, he may have an action on the case to be repaid *in damages*. Spencer's Eq. Jur. p. 241, note (*a*) vol. I. The record shows that this company formally accepted title to property covered by and chargeable with a trust involved in litigation, and is therefore in form and fact a *male fide* holder of such property, in fraud of the rights of the beneficiary of the trust, and its individual members become liable in damages accordingly. The individual members of the corporation were the real acceptors, and are now the real holders of said property. There is no "plea," as such, accompanied with an answer as to the fraud and conspiracy charged or the specific or overt act alleged, but all are unhesitatingly and unblushingly confessed. This being true, upon every principle and rule of law governing the interposition of general demurrers, this paper, filed as a demurrer, should be overruled: The practice cannot be better stated than in H. *vs.* Ashman, 1 Stocton, N. J. 83: "It was held that when a defendant is charged with fraud, and that he has procured a title

fraudulently, and is fraudulently setting it up to defeat the plaintiff, the Court of Chancery may compel such fraud-doer to disclose the fact alleged as a fraud, and all the circumstances attending it, in order that the Court may determine whether these circumstances establish the fraud."—1st Daniells, 570. "A demurrer cannot be good in part and bad in part, which would be the case if a demurrer professing to go to the whole bill could be supported by the allegation of a ground of demurrer which applies to a part only."—1 Daniels, 589, 583, 4 Sec., note 1; and, upon a general demurrer to the whole bill, if the complainant is entitled to any relief whatever upon the case stated in the bill, the demurrer will be overruled." Pages' Ch. R. Walworth, Chanc. p. 415, *vs.* Mayor, Aldermen, etc., of the City of New York. "A legal principle is never so applied as to protect a fraud." "It would be a travesty of legal principles to hold two (or more) men competent by a juggling use of legal forms to wipe out a third man's rights." Cable *vs.* Nonemaker, 74–78 Penn., p. 505, 506. Chancery's equitable research penetrates every disguise to evade its all-searching rules to detect fraud in every form, and discards mere technical objections to probe the conscience of the fraud-doer and reach the ends of justice. And here our attention is turned to the fact of the *law side* of this case, and we submit that our remedy exists both in law and equity, founded upon the statutes of the United States, and upon principles so well known and so long and firmly established as to need no discussion here further than to say, that in case a number of individuals should unite and combine to destroy our house or barn and carry out the combination by the commission of the overt act, it would be a question of damages in a court of law; but if with that act there was united a fraud upon our rights

as the beneficiary of a trust by a fraudulent violation of the trust, and the discovery of the means by which the scheme was planned, inaugurated and carried out, then it is alone the province of a Court of Chancery to hear and determine the issues involved in the fraud, discovery of the facts and the damage done, for which a court of law has no adequate powers.

XXXII.

The decision of the Supreme Court of the United States, as rendered by your Honors, is "For all that has come to Whipple's hands, and for all that is included in the patents to him and Dickerson, he is, under the terms of the sixth article, a trustee for Ambler to the extent of one-half, and must be charged and held to account in this proceeding." "As to Dickerson, while he is not a trustee under that article, we are of opinion that he has so far knowingly connected himself with and aided in the fraud on Ambler that he cannot resist Ambler's right to an undivided half of both the patents to Dickerson and Whipple, and of the profits made or to be made out of them." And, may it please your Honors, the question is: Have these defendants, as shown by the bill, and the exhibits filed therewith and a part thereof, so connected themselves *knowingly* with Whipple and Dickerson, and aided and abetted them in the scheme of fraud on Ambler that they cannot resist his rights in a court of equity upon a bill alleging general and specific acts of fraud, combination and conspiracy to deprive him of his rights and immunities under the patent laws of the United States? And, did they use the Statute of the State of Missouri to enable them to carry out the scheme, pending a suit in a court of record having jurisdiction of the subject matter thereof and in violation

of trust? If they did, and these facts are *established* by the bill and fortifying exhibits *of record* surely they are not *in law or equity* entitled to the interposition of a demurrer *manifestly* to bring into disrepute the decision of the Supreme Court of the United States in violation of the Act of Congress, to defeat the ends of justice.

The only remaining questions are: Are these transactions included in these patents, and if so, in what way can the judgment of the Supreme Court be vindicated, and Ambler's rights be determined, if these demurrers are to prevail, and he cannot reach the fraudulent assignees and confederates of the chief conspirator, Rodney M. Whipple? If demurrers are to be interposed on every hand, and no hearing can be had, of what value is the decision of the Supreme Court of the United States in favor of the successful litigant after years of acrimonious controversy? And of what authority is such an opinion, in the vindication of law and justice, against men determined to oppose or evade it? The complainant has been constantly met by false issues and illegal propositions long enough to screen wrong-doers in the prosecution of illegal defense to *adjudicated* and *manifest rights.*

XXXIII.

That in the argument upon demurrer to a bill charging fraud and conspiracy as a foundation for the suit, the fraud and conspiracy having been established by the decision of the Supreme Court of the United States upon an *action in chancery*, upon the subject-matter of the suit, and, in which the defendants individually become *direct* parties to the transaction, and in which the plan and scheme of fraud and conspiracy is fully and at large set out, we find an attempt at evasion, and, an effort at avoidance of the liability of the defendants

upon the ground that they had merged their *individual liability* into a *corporate* body by the fraudulent use of the laws of the State of Missouri.

A general demurrer is presented, not only going to the grounds of the bill, but, to any possible relief, and yet it is a well-settled principle that, when fraud is charged—a trust invaded, and a suit intruded upon touching the same subject-matter, the *demurrer* must be fortified by some *strong point of law*, which effectually bars the action as made by the bill, and, yet it is a remarkable fact that not a single point of law is offered as a foundation upon which this "demurrer" is interposed; and NOT A SINGLE AUTHORITY IS CITED.

Mr. Shepley conviently ignores the allegations, that, in a large number of the paragraphs of the bill the fact is charged, that the Missouri Liquid Fuel and Illuminating Company was FRAUDULENTLY formed by the defendant for the express purpose, and with the object and *intention* of cheating and defrauding the complainant, and, in furtherance and pursuit of the scheme of fraud and conspiracy first set on foot by Whipple and Dickerson in September, 1869, at the shops of Pettit and Dripps, in Washington. And further, and still more important, the gentleman ignores the significant fact that the "Missouri Liquid Fuel and Illuminating Company" *is not a party to* this suit, but a stranger hereto, and the assumption of the defendants that the bill alleges, that that Company simply and only committed the acts "complained of" is not only false and untrue, but that it is such a false representation of the facts in the case, as to amount to not only a misreading of the bill, but a falsification of the records. The assumption of the "demurrer" is, "THAT THEY ARE THEREIN STATED TO HAVE CONNECTION THEREWITH SIMPLY AND ONLY AS BEING MEM-

BERS OF A CORPORATION, WHICH CORPORATION MADE THE CONTRACTS AND DID THE ACTS COMPLAINED OF." Now, may it please your Honors, we beg especially to refer to the first paragraph of the bill, in which the following appears: "and they (the defendants) are directors and stockholders in the Missouri Liquid Fuel Company, and hold interest therein, said Company having been FRAUDULENTLY INCORPORATED under the laws of the State of Missouri."

Paragraph 2 sets out the trust in *Whipple* and *Dickerson* (Dickerson not being noticed by Mr. Shepley). Paragraph 3 has the following: "and your orator avers that *these defendants*, and each and *every* of them *jointly* and *severally* are chargeable therewith and bound therefor." Paragraph 34 shows that the Company was fraudulently formed with the *object* and *intention to defraud*. "That the defendants formed and incorporated the Missouri Liquid Fuel and Illuminating Company, and became directors and shareholders therein with the object and intention of *deceiving* and *defrauding* both your orator and the public, for which they *fraudulently* made use of and violated the corporate laws of the State of Missouri.

The law upon Whipple's right to do the very things he did do, as represented by Mr. Shepley, may be briefly found in the following authorities as to the right of one partner to defraud another. The partner who breaks off a partnership with an unfair design disengages his co-partners from all engagements to him, but does not disengage himself from his obligation to them.

All partnership transactions must be in the name and style of the firm.

One of the partners cannot make a valid partnership engagement, except on partnership account. Does it

authorize these defendants to purchase the property of Whipple and Ambler, of the firm of Whipple and Dickerson, with notice of the partnership of Whipple and Ambler and of its extent?

Every man is presumed to know the extent of the partnership with whose members he deals. The authority (of one partner to bind the others) can be exercised only in cases falling within the ordinary business and transactions of the firm, where the other party has no knowledge or notice that the partner is acting in violation of his duties and obligations to the firm, or for purposes disapproved of by the firm; or in fraud of the rights thereof. Story on Part., 110.

Every contract in the name of the firm in order to bind the partnership, must not only be within the scope of the business of the partnership, but it must be made with a party who has no knowledge or notice that the partner is acting in violation of his obligations and duties to the firm, or for purposes disapproved by the firm, or in fraud of the firm, for every such contract made with such knowledge or notice will be void as to the firm. 3 Hill, R. 279.

When the business of the partnership is defined, known or declared, and the company do not appear to the world in any other light than the one exhibited, one of the partners cannot make a valid partnership engagement, except on partnership account.

Where there are *but two persons* in the firm, and they dissent from each other, it would seem a just result that it amounts to a temporary suspension of the rights and authority of each to carry on or manage the partnership business, or dispose of the partnership property, in respect to all persons having notice of such disagreement. Story on Part., 123.

Does this authorize these defendants to purchase this property pending the litigation concerning it, and at the same time operate to release them from all liability established by such litigations?

A purchase made of property actually in litigation *pendente lite* for a valuable consideration, and without any express or implied notice in point of fact, affects the purchase in the same manner as if he had such notice, and he will accordingly be bound by the judgment or decree in the suit. 2 Fonbl. Eq., b. 2, ch. 6, sec. 3, note n. 3 Atk., 592, 11 Ves., 194. 2 Atk., 175. 1 Johns, Ch. R., 566.

He who purchases during the pendency of a suit, is held bound by the decree that may be made against the person from whom he derives title. If a person pays money in opposition to it (a decree) he will be compelled to pay it again. 1 Vern R., 57. Sugden on Vendors, ch. 17, sec. 1, 2. Does it authorize the defendants to enter into a conspiracy, formed for the sole purpose of defrauding his partner? That this conspiracy was formed is settled. That these defendants united with it is charged, and facts set out which, if true, prove this charge. But upon demurrer the facts must be admitted. "It makes no difference at what time anyone enters into the conspiracy, he becomes a party to every act which had been previously done by any of the others." Bright (Pa.), 143.

In civil actions, the damage and not the conspiracy is the gist of the action. 2 Hall (N. Y.), 277. 7 Hill, 104.

"What would be the legal effect of an actual combination to resist a patent is a question of much importance." Woodworth v. Sherman, 3; Story, 172.

"An individual patentee (or the owner of any other property) may successfully resist an individual when it

may be much more difficult to resist the combined force of a great nnmber of persons united to oppose his patent." 173 *Ibid.* "In many cases it is lawful for individuals to do what cannot lawfully be done by a combination." 173, *Ib.*

"It would seem that a combination of a number of persons to resist a patent approaches very near, if it does not actually reach, a criminal conspiracy. 173, *Ib.*

"Nor is it necessary to prove that the conspiracy originated with the defendants, or that they met during the process of the concoction; for every person entering into a conspiracy or common design already formed, is deemed in law a party to all acts done by any of the other parties, before or afterwards, in furtherance of the common design." Greenleaf on Evid., vol. 3, 93; also, vol. 1, III.

Mr. Shepley rest his chief points of argument upon the purchase of the trust property in the patent pending the suit, that the defendants run only the risk of losing the purchase money. This cause presents a different case, as the complainant has not only an equitable interest in the patents DIRECT, *but also in the proceeds that may be derived from them.* We will give a few digested authorities upon the purchase of trust property, with notice of an equitable title and a fraudulent breach of trust and alienation pending a suit in a court of record having jurisdiction.

And the principle is well settled that a *purchase pendente lite* carries with it all the consequences of the suit. "And full notice of a trust" draws after it all the consequences of a full declaration of the trust as to persons chargeable with such notice. (1 Pet., 174.)

The rule of law as to purchases of the subject matter of a suit pending the suit is: that he who purchases dur-

ing the pendency of the suit is held bound by the decree against the person from whom he derives title. The litigating parties are exempted from taking any notice of the title so acquired, and such purchaser need not be made a party to the suit, and hence rises the maxim, "*pendente lite nihil innoventur*," the effect of which is, not to annul the conveyance, but only to render it subservient to the rights of the parties in the litigation. (Story's Eq. Jur., §§ 405 and 406; 2 Story's Eq., § 908; Story's Eq. Pl.)

The rule is, that if defendants purchased of and paid the whole amount of money to the trustee, who had fraudulently committed a breach of the trust, the defendants are estopped from denying it. [Big. on Es., p. 523.] "The defendant ought not to be admitted contrary to his own acknowledgment and deed." [Big., p. 223.] "Estoppel is raised by acquiesence of defendant in unlawful act." [Big., 523.]

It must be remembered, however, that a purchaser, even in the United States, who colludes with an executor or trustee, will be held responsible for any misapplication of trust money growing out of the same transaction; but this falls under a different doctrine, namely, fraud. (Bispham's E., p. 271.)

Although courts of equity have not made general definitions stating what is fraud and what is not, they have not hesitated to lay down broad and comprehensive principles of remedial justice and to apply these principles in favor of innocent parties suffering from the fraud of others. (Perry on Trust, § 170.)

The leading principle of this remedial justice is by way of equitable construction to convert the fraudulent holder of property into a trustee, and to pursue the

property itself as a fund for the purpose of recompense. In investigating allegations of fraud courts of equity will discard mere technicalities and artificial rules and look only at the general characteristics of the case, and go at once to its essential materiality and merit. (Perry § 170, p. 139.)

This extreme case overcomes every proposition of the defendant's brief, either as to Dickerson or the defendants to this bill.

"So property, obtained by one through the fraudulent practices of a third person, will be held under a constructive trust for the person defrauded, though the person receiving the benefit is innocent of collusion. If such person accepts the property, he adopts the means by which it was procured; or, as Lord Chief Justice Wilmot said: 'Let the hand receiving the gift be ever so chaste, yet if it comes through a polluted channel the obligation of restitution will follow it.'" (Perry on Trusts, § 211.)

We give these conclusive authorities to show how utterly inconsistent the propositions are laid down in defendant's brief, upon the points sustained by the universal law of equity.

2. In an action against two defendants for fraudulently obtaining the property of the plaintiff, the declaration alleged that the fraud was a matter of pre-arrangement between them. The fraud of one of the defendants was not contested; and as to the other defendant, *Held*, that his subsequent participation in the fraud and its fruits was as effective to charge him as preconcert and combination for its execution.

3. Where fraud in the purchase or sale of property is in issue, evidence of other frauds of like character, committed by the same parties, at or near the same time, is admissible.

4. Where two persons are engaged together in the furtherance of a common design to defraud others, the declarations of each relating to the enterprise are evidence against the other, though made in the latter's absence.

XXXIV.

The gentleman speaks of the large amount ($4,000,000,) claimed by the defendant, facetiously, but which, by his "demurrer" he admits to be true, and as this amount is fixed by the sales made, and not by the complainant, and as it has been asserted in open court that the complainant has $50,000,000 against him, and, as the defendants are not among the poor men of St. Louis and elsewhere, it is not unreasonable for him to bring his suit, for at least the aggregate amount shown by a certified transcript of records of the Patent Office of the United States, as set forth in the bill, namely $7,591,067 to the extent of one half.

XXXV.

As to a bond, the complainant presents the fact that a bond was filed in this cause of three hundred dollars, being one hundred dollars more than required by the rules of practice, and a deposit of fifty dollars was made for immediate fees of the clerk, the marshal's fees being also advanced. And in the case of Ambler v. Whipple and Dickerson, in the Supreme Court of the District of Columbia, the complainant gave a bond, approved by the court, of fifty thousand dollars, upon an injunction granted. So much for the gentleman's bond business.

XXXVI.

Mr. Shepley says in his brief as follows: "But this purchase, *as the bill shows,* was not made by these defendant, but by the incorporation, *regularly* and *legally incorporated,* in which they *happen* to own stock and some

of them *happen* to have been directors, and if any one is liable *it alone can be.*" The bill repeatedly charges that this corporation was *not lawfully, but fraudulently formed* to carry out, to further and extend a scheme of conspiracy and fraud previously formed.

He we have an issue of fact forced upon us by this "demurrer" unknown to equity practice. The bill sets out and tenders one state of FACTS, and the brief, the adverse *of these identical facts*, that is to say, the bill charges and the exhibits establish as a FACT—A THING DONE, that the "corporation" was *unlawfully and fraudulently formed.* The brief tenders the issue that this corporation was *regularly* and *legally* incorporated. If this paper *is* a *demurrer*, the charges of the bill are *admitted*, and the defendants are barred from denying them. If it is *not* a demurrer, it is irregular and should be stricken from the record. If it is a plea, there is no answer accompanying the plea denying the fraud, and it is an interpolation.

The HAPPENING part of this paragraph, in view of the charges and allegations of the bill is *too rich* to be treated seriously, and, we can only refer to it, as a part of a facetious game of the learned gentleman and classify it as among the professional arts of the *little joker* in the game of "now you see it, now you don't see it."

XXXVII.

The preliminary steps, the formation and foundation of this "corporation" was from beginning to end, as fully charged and set out in the bill, *an outrageous* scheme of fraud, combination and conspiracy for which there is in law and fact, as against *these* defendants, no adequate remedy; as dollars and cents will not bring back ten years of acremonious litigation and its attending consequences.

XXXVIII.

The gentlemen indicates that our *true* cause of action is *at law*, and not in equity, and, we have no doubt, were we to go to a court of law for redress, the gentleman could tell us that our sole remedy was in a court of equity; and thus we would be shuttled back from law to equity till exhausted patience had worn out the woof and warp of our fabric of right, in vainly attempting to meet the demands of professional (?) ingenuity. It will be borne in mind that this suit is not only an action on the case, in the *nature* of a conspiracy for damages, but, for discovery and account, and to ascertain the extent and measure of damages; and, that the bill is founded in law and fact upon the former case *in equity* of Ambler vs. Whipple and Dickerson, and, the decision of the Supreme Court of the United States in chancery, rendered by your Honors; and that the statute (sec. 1979), of the Revised Statutes, provides for "*an action at law, suit in equity*, or, *other proper proceeding* for redress," in such cases,—"the deprivations of any rights, privileges or immunities, secured by the constitution and laws.

Will your Honors please notice that in the OPINION of the Supreme Court of the United States, Nov. 30, 1874, that the following principle is authoritatively announced as the dictum and *judgment* of the Court in the cause then pending of Ambler vs. Whipple and Dickerson, and that the *charges* of bad *conduct*, etc., set out in that cause against the complainant therein, may make "a strong case for relief, on such terms as equity might impose for the protection of both parties." "But they did not authorize Whipple, *of his own motion*, to treat the partnership as ended and take to himself all the benefits of their joint labors and joint property;" and, in the

SECOND decision, your Honors most emphatically say: "In short, if this cause was to be tried on *his merits* instead of the MERITS of his case," etc., and, in *this* connection the complainant begs your Honors to consider, that the complainant is NOT ON TRIAL in this as he was not in the former cause.

XXXIX.

They fail to meet the true charges and allegations of bill—raise false issues and magnify narative and immaterial averments so as to misrepresent the entire character and legal intendment of the bill, and undertake to shift and trade off the liability of the defendants not in *solido* merely, but severally, and then throw out the suggestion that if *any one* is liable, it is the fraudulently formed corporation and not the individual corporators.

This assumption is so utterly untrue that its statement carries with it its own refutation. In our former brief we lay down principles of law and facts of record in this case, which the gentleman not only fails to meet, but absolutely ignores, and among these we name the act of Congress, see sec. 1797 of Revised Statute, directly and *authoritatively* bearing upon this case, and *absolute authority to this court.* We also beg to call your Honors' special attention to the extent of the supplemental decree of the Supreme Court of the District of Columbia, of May 11, 1877, filed as as an exhibit in this case; and we need not press upon your Honors an exhaustive examination of this case, in order to—a just and safe adjudication of its merits. We ask that the "demurrer" be overruled with costs.

In conclusion, may it please your Honors, I invoke all the authorities cited, and crave the indulgence of the Court to an exhaustive examination of the same, and the appplication to the case as made by the bill, and

especially Sec. 1,979 of the revised statues, for the deprivation of civil rights, and I also submit the following errors of the court below, in sustaining general demurrers going to the whole equity of the bill, tendering issues patent upon the face of the pleading or so-called demurrer.

Errors of the Court Below.

"At Chambers."

1. The Court erred in not considering the case as made by the bill.
2. In not considering the relations existing between the defendants and Whipple and Dickerson.
3. In not considering the equities of the bill.
4. In not considering the scheme of fraud alleged and the overt acts committed, as charged and fully and at large set out in the bill.
5. The Court erred in not considering the whole bill; the scheme of fraud and conspiracy charged and the overt acts of fraud committed by the defendants, in furtherance of the scheme.
6. The Court erred in not considering the law of the case, and the authorities cited bearing thereon.
7. In not considering the relations of Blunt and Insley with Whipple and Dickerson and the other defendants, and in not treating defendants Blunt and Insley as Judge Dillon had previously done, as "*stool pigeons*" or agents of Whipple and Dickerson in the scheme of fraud and conspiracy charged and fully set out in the bill, and the law and authorities bearing upon such a state of facts.

8. The Court erred in practically accepting the theory of the defendants, that the defendants had a right to purchase the property of Whipple and Ambler, and the trust property of Ambler of the fraudulent firm of Whipple and Dickerson adversely and hostile to the firm of Whipple and Ambler, in violation of the decision of the Supreme Court in the case of Ambler *vs.* Whipple and Dickerson, and of the rights of Ambler.

9. In sustaining the acts of Whipple and Dickerson in dealing with the trust property of Ambler, in violation of the trust, and pending a suit in relation thereto.

10. In maintaining and accepting the theory of the defendants, that Whipple had a right under his contracts with Ambler to do the very things he did do.

11. In sustaining the two contradictory theories of the defendants, first, that Whipple had a right to join Dickerson with him, and sell the property of Ambler in fraud of Ambler in the name of Whipple and Dickerson, for the use and benefit of Whipple and Dickerson in violation and breach of the trust, and hostile to the partnership of Whipple and Ambler contrary to law, and the very rights of the case; and, second, that Whipple and Dickerson had a right to sell by virtue of the fraudulently obtained patents.

12. In sustaining demurrers going to the whole equities of the bill, and for discovery without some strong point of law, or any point of law whatever to sustain them.

13. In sustaining a demurrer which raises issues, which can only be determined by trial upon the merits; namely, the affirmation of contracts, denial of acts of defendants, affirmation as to members of a corporation in issue by the bill; assumed affirmation of sales also in issue by the bill, and other matters.

14. In accepting the theory of defendants in violation of the decision of the Supreme Court in the case of Ambler *vs.* Whipple and Dickerson; in denying that the trust did or could attach to the patents, and upon the proceeds in the hands of Whipple only. The Supreme Court say: * * "that a decree must be entered in the Court below declaring Dickerson and Whipple to hold in trust, for the benefit of Ambler, to the extent of one-half the two patents issued to them," etc., and ante, that Ambler's right was "an undivided half of both the patents and of the profits made and to be made out of them," and the decree below entered in accordance with said opinion, and in obedience to the mandate of the Court declares, that "Rodney M. Whipple and Thomas S. Dickerson did receive and do now hold in trust for the benefit of the complainant Augustin I. Ambler one-half of the two patents issued to them, and described in the pleadings as numbers 95,665 and 102,662, and all the rights, franchises, benefits, privileges, sales, and receipts arising therefrom, or to arise therefrom," and by practically denying the same in violation of adjudicated rights.

15. In accepting the theory that Whipple had a right to collude with Dickerson to destroy the partnership of Whipple and Ambler, to fraudulently form the partnership of Whipple and Dickerson, and fraudulently obtain patents on the invention of Ambler, under Whipple's contracts with Ambler, for these are among the things that Whipple did.

16. That Whipple had a right to collude with Dickerson, combine with Blunt, confederate with Insley, and fraudglently unite with the other defendants in the bill in the frauds on Ambler in violation of law and good conscience.

17. In accepting the theory of the defendants, that Whipple did the very things that Ambler had, by his contracts, put him there to do, and in the manner and form in which they were done, in violation and breach of the trust, and the rights and equities of Ambler.

18. In accepting the propostrous assumption of the defendants, that Whipple at the time of these transactions had the full, *absolute and complete jus dis ponendi* of the patents, and that Ambler had no interest therein, and that Whipple was *sui juris* in every respect, and in all respects under the contracts made to protect Ambler's rights, in violation of the rights therein clearly protected by the plainest and most unequivocal language, and that Ambler *kept* him there to do the very things he did do, in face of the suit brought January 4, 1870, by Ambler to recover these very rights.

19. In holding the fraudulent firm of Whipple and Dickerson to be a *bona fide* and not a *mala fide* firm, and by protecting them in their scheme of fraud on Ambler.

20. In holding (by sustaining the demurrers) that the defendants had a lawful right to confederate with Whipple and Dickerson in and about this partnership and trust property, in the frauds on Ambler, in violation of equity and right.

21. In sustaining the hostility of the fraudulent firm of Whipple and Dickerson, against the *bona fide* firm of Whipple and Ambler; and, in accepting the theory that Whipple and Dickerson had a right to do the very things they did do, and in substance, manner and form in which they were done, by virtue of Whipple's contract with Ambler.

22. In sustaining the defendants in the assumption that they had the lawful right to fraudulently purchase the trust property of Ambler, under the contracts between Whipple and Ambler in violation of the partnership and the trust, in fraud of the rights of Ambler, of the fraudulent firm of Whipple and Dickerson, and pending a suit in relation thereto with these very men — Whipple and Dickerson.

23. The Court erred in treating the transactions of these defendants with Whipple and Dickerson as honest, straightforward and *bona fide*, instead of dishonest and *mala fide* transactions, which the facts set out in the bill fully and clearly establish.

24. In refusing to accept the true theory of this case — that the defendants knowingly and fraudulently united and connected themselves with Whipple and Dickerson in the frauds on Ambler, precisely in substance as Dickerson had knowingly connected himself with Whipple in the frauds on Ambler in and about these very patent, spartnership and trust property, in violation of the partnership and the trust, and in bold violation of law, of the authorities cited, and the very rights of the case.

25. The court erred in sustaining a demurrer bearing upon its face a falsehood, as follows, namely: "Complainant shows by his said bill that the above named defendants made any contract, nor had anything to do with the subject-matter of the bill, and that they are therein stated to have connection therewith simply and only as being members of a corporation, which corporation made the contracts and did the acts complained of; and that the complainant affirmed the sales made by Whipple and Dickerson, when the very contrary and the reverse of these allegations are true in fact, as fully and clearly shown and conclusively established by the bill.

26. The Court erred in ignoring and not considering the law and the authorities cited, and by not going at once to the essential materialities, equities and the very rights of the case as made by the bill.

27. The Court erred in ignoring and not considering Section 1979 of the Revised Statutes, for the protection of civil rights; which the appellant herein again specially invokes.

28. In not examining the equities and the very rights of the case as made by the bill, the law of the case, the authorities cited, and their application to the charges and allegations of the bill.
29. The Court erred in refusing and not granting the plaintiff a trial in open court in the Eastern District of Missouri, where by law and universal practice he was entitled to a hearing.
30. In compelling the plaintiff to accept a trial upon the record, and upon a written or printed argument at chambers in Washington City, at which the plaintiff was denied the right to be heard by counsel or in person, a clear violation of every principle of equity and justice.
31. In denying the plaintiff a hearing in the place provided by law, and guaranteed to every litigant by the Constitution and laws of the United States, and by compelling the plaintiff to accept a hearing at chambers in Washington, without counsel, as in error 30 set forth.

A. I. AMBLER,
In Person.

And hereupon and by reason of the errors set forth in the two preceding paragraphs, the plaintiff craves your Honors to grant him four hours instead of two in the argument at bar upon these demurrers.

A. I. AMBLER.

IN THE

UNITED STATES SUPREME COURT.

AUGUSTIN J. AMBLER

vs. No. 128.

CHOUTEAU, HARRISON ET AL.

Brief of Phillips & Phillips for Appellees.

The record shows the following facts:

On 18 December, 1871, the appellees, under the law of Missouri, were incorporated under the name of the "Missouri Liquid Fuel and Illuminating Company," the purpose being to smelt ores, &c., under the *Whipple and Dickerson patents*, for vaporizing petroleum and other oleaginous substances, &c.

The capital stock was fixed at $500,000, and the present appellees were elected directors for the first year.

Whipple and Dickerson held two patents for "improvements in the manufacture and application of gas from petroleum, one dated 12 October, 1869, No. 95,655, and one dated 3 May, 1870, No. 102,662."

On 23 December, 1871, Whipple and Dickerson sold and assigned their interest, under these patents for the State of Missouri, to Blunt and Insley, and on same day Blunt and Insley conveyed to the said corporation all their interest in

consideration of the "sum of $83,000 cash, and $417,000 in fully paid up stock in said company."

Recorded 13 January, 1872, pp. 82, 83.

It is further shown that on 24 May, 1869, articles of partnership were entered into between Ambler, the appellant, and R. M. Whipple, reciting that they had invented a new and useful improvement in the manufacture of gas from petroleum, for which they were about to make application for letters patent.

By the 3d article it is agreed that Whipple "shall have the exclusive and entire business management of the same, so as to include the introduction of said invention to public use; * * * and for which purpose, and all and singular the purposes incident thereto, the said Whipple shall have full and ample power and authority to act for said Ambler in the premises, to sign his name and make his seal to any instrument of writing needful and necessary to carry out the object and intention of the agreement," &c.

By 5th article it is provided that all money expended shall be "paid and discharged from and out of any income, proceeds, or receipts derived therefrom or on account thereof."

By the 6th article, that the letters patent that may be obtained shall be owned by the parties in equal shares, and "all proceeds of sale of any and every kind and character shall be shared by and between the parties thereto—share and share alike."

This was recorded in the Patent Office on the day of its execution.

On the following day, 25 May, Ambler made an assignment to Whipple of all his interest in the said invention so as to invest him with "the full, absolute, complete, and exclusive power and authority to sell and convey the same or any part thereof."

This was also recorded in the Patent Office. (pp. 41, 42.)

On 4 January, 1870, Ambler filed his bill in the Supreme Court of the District of Columbia against Whipple and Thomas S. Dickerson.

In this proceeding it is averred that a patent for the above invention was issued to Whipple and himself 13 July, 1869—No. 92,687—"to be held and used for their joint benefit, according to the terms of the articles of partnership and the assignment recorded in the Patent Office."

That Whipple subsequently conspired with one Dickerson to defraud the complainant of his rights to this invention, and succeeded in obtaining a patent to said Whipple and Dickerson 12 October, 1869, No. 95,665.

That, while the partnership with Whipple remains intact, so far as the complainant is concerned, Whipple, in violation of the trust reposed in him, is maintaining an adverse interest to him.

That, in pursuance of the conspiracy, the defendants have sold to certain States, railroads, &c., the use of this invention for large sums of money, which are held and enjoyed adversely to the complainant and in violation of his rights.

That by the terms of the letters of co-partnership it was Whipple's duty to render an account of the matters and things done in this behalf, and share and share alike in the proceeds and profits derived therefrom.

The prayer is that patent No. 92,687, to Whipple and Ambler, be vacated—the subject-matter thereof being the sole and exclusive invention of the complainant.

That the patent No. 95,665, to Dickerson and Whipple, as assignee of Dickerson, issued 12 October, 1869, be annulled and vacated as having been obtained in violation of complainant's rights.

That the defendants be required to render an account of all negotiations and sales made since 24 May, 1869.

On 27 February, 1871, Ambler filed a supplemental bill in which it is averred that in the month of April, 1870, the defendants fraudulently applied for an improvement in an apparatus for burning liquid fuel; on 3 May, 1870, they received letters patent for the same, No. 102,662.

The prayer is for a decree establishing his rights as inventor of the several improvements in the manufacture of gas from petroleum; that full effect be given to the articles of co-partnership, and that the defendants Dickerson & Whipple convey to the partnership of Whipple & Ambler all rights, claimed under patents to Whipple & Ambler, to Whipple & Dickerson as assignees of Thomas Dickerson, and to Dickerson & Whipple. That the defendants be decreed to account for all sales made by them.

On 27 June, 1871, the bill was dismissed at cost of complainant. On appeal to the Court in Banc the decree of dismissal was affirmed 2 December, 1871.

Ambler then appealed to this Court, where the decree of the Supreme Court of the District was reversed.

The case is reported in 20 Wall., 546.

MILLER, J., in delivering the opinion of the Court, says:

> "It is to be observed that neither party prays for a dissolution of the partnership. Indeed, the bill and cross-bill, and the answers to both, proceed upon principle which do not recognize the partnership as existing. Complainant seems to imply that by reason of Whipple's course of conduct he is remitted to all his rights as inventor, and as sole inventor he in entitled to all the benefit of it. Whipple assumes that by his purchase from Ambler, and Ambler's misconduct, the partnership has been dissolved, and he has succeeded to all his rights, if they are of any value."

After a review of the evidence, this result is reached, "that the case shows nothing which deprives Ambler of his rights under the original contract with Whipple; that

Whipple is chargeable, as trustee for Ambler, with one-half of all that has been realized or may be realized from the use of the patent to Whipple & Ambler, and the patent to Whipple & Dickerson."

The decree was reversed, with direction to enter a decree "declaring Whipple & Dickerson to hold in trust for the benefit of Ambler, to the extent of one-half of the two patents issued to them, mentioned in the pleadings as 95,665 and 102,662; that an accounting be had as to the profits realized by them, or either of them, from the *use or sale* or otherwise, arising from said patents."

This mandate was carried into effect 2 January, 1875, and on report of Master there was found due to Ambler for sales and receipts the sum of $666,052.35, for which a decree was entered.

The present bill was filed by Ambler in the Circuit Court, Eastern District of Missouri, August, 1877. The defendants are alleged to be citizens of Missouri, with the exception of Blunt and Insley, who are citizens of Kansas, and Ellethorp, who is a citizen of Illinois. They are designated and described as "directors and stockholders in the Missouri Liquid, Fuel and Illuminating Company," and it is alleged that they hold interests therein, the said company having been fraudulently incorporated under the laws of Missouri December 18th, 1871, and recorded in the office of the Secretary of State 19th December, 1871, with a capital stock of $500,000.

The complainant claims for "damages in this cause of action to the full amount of every sale, &c., &c., made by Whipple and Dickerson, by Blunt and Insley, and by all the defendants whenever or wherever made, making a sum of eight millions, of which your orator has been cheated to the extent of one-half, with interest thereon from the date of each transaction, and further to the extent of $500,000 for

time, labor and costs of litigation in and about the partnership trust property aforesaid." Art. 83, p. 35.

In the 7th Article the complainant thus describes his demand:

> "Your orator shows that this cause is an action on the case in the nature of a conspiracy founded upon the fraudulent intention and specific acts of the defendants to cheat, swindle and defraud your orator of his franchise and the right in the patent and trust property aforesaid; and that the said plan consists in an agreement with a common design to do an unlawful act, and which plan and conspiracy having a common design to do an unlawful act, was fully carried out, as will hereafter more fully appear, to the great damage and injury of your orator."

Again, in the 10th Article, after describing many and special causes of action which he has against defendants, it is averred "that neither of these is included or intended to be included in this suit, and your orator insists that this cause of action contains, and is intended to contain, but one cause of action, and that is an action on the case in the nature of a conspiracy," &c., &c.

The gravamen of the complaint for which redress is sought against these defendants, would appear to be that they did not, when the company purchased from Whipple & Dickerson, "provide any means for the protection of your orator's share in the purchase-money, as they were bound in equity to do."

To save the expense of litigation, the counsel below thought it was proper to file a demurrer on behalf of the defendants, who were citizens of the State, on the grounds that the case made by the bill does not entitle complainant to any discovery or relief as prayed for; nor does it show that the defendants made any contracts, or had anything to do with the subject-matter of the bill; that they are therein stated

to have connection therewith simply and only as being members of a corporation which made the contracts, and did the acts complained of; and it is not in any manner shown that they are or can be affected individually; that the bill affirms the sales as made of the interest on the several patents by Whipple and Whipple and Dickerson to said corporation, and, at the same time, claims to recover from the defendants for the consideration already paid by the corporation, and in a different manner from that contracted for. (p. 123.)

On 28 January, 1878, Mr. Justice MILLER decreed—

> "That the bill of complaint does not make a case in equity sufficient to call upon the defendants to answer thereto, and the demurrer of defendants is sustained; and it is ordered and decreed that the bill be dismissed, and that the defendants recover their costs." (p. 124.)

The case is now here on appeal from this decree.

Was the demurrer properly sustained?

The bill seeks to recover damages as in an action on the case; and this is accompanied with charges of fraud frequently repeated, but all revolving on one axis—to wit: the purchase made by the Company of an interest in the patents issued to Whipple and Dickerson.

There is nothing in the case to show that the complainant had not a "plain, adequate, and complete remedy at law."

Where such remedy exists, equity has no jurisdiction; for, in such a case, the adverse party has a constitutional right of trial by jury.

Hardwicke vs. *Forbes*, 1 Bibb (Ky.), 212;
Ferson vs. *Sanger*, Dav., 252;
Parr vs. *Company*, 2 Bl., 551.

The *concurrent* jurisdiction of equity has its origin in one of two sources: Either the courts of law, although having a general jurisdiction, cannot give adequate, specific, and permanent relief; or, under the actual circumstances of the case, it cannot give any relief at all.

In a great variety of cases, though the concurrent jurisdiction exists, fraud is remediable, and effectually remediable at law.

Story's Eq., secs. 76, 184;
Russell vs. *Clark*, 7 Cr., 89.

Lis Pendens.

At pp. 33 to 35 is an itemized statement of the facts charged as notice, actual or constructive, to defendants, most of which are set forth in the bill filed in the District of Columbia against Whipple and Dickerson, 4 January, 1870; and this is relied on as the twelfth ground for charging the defendants as purchasers, in 1871, with constructive notice of all the equities therein set forth.

The defendants, citizens of Missouri, were not affected by the pendency of this bill in the District of Columbia.

It is true the usual definition is, that *lis pendens* is *notice to all the world;*

But the generality of these words is limited by the reason on which the rule is founded—to wit: that every man is presumed to be attentive to what passes in the courts of justice of the State or sovereignty where he resides; and, therefore, a purchase made of property in litigation, *pendente lite*, affects the purchaser in the same manner as if he had actual notice.

This limitation is not changed by the constitutional provision that "full faith and credit shall be given in each

State to the public acts, records, and *judicial proceedings* of every other State."

1 Story's Eq., sec. 405;
Shelton vs. *Johnson*, 4 Sneed, 672.

Where the doctrine applies, the *lis pendens* is only operative as notice from the service of the subpœna—as to which there is no averment in the bill.

Jackson vs. *Dickerson*, 15 John., 309.

As to the subjects on which it operates—
See *Warren* vs. *Marcy*, 97 U. S., 96.

Further discussion as to this is unnecessary, as we may assume the defendants are chargeable with notice of the bill.

The effect of *lis pendens* does not necessarily avoid a purchase *pendente lite*, but only subjects the purchaser to the decree that may be made against the person from whom he derives title.

Bishop of Winchester vs. *Paine*, 11 Ves., Jr., 196.

The complainant, in his bill against Whipple and Dickerson, while charging that they had made large sales of his invention, does not seek to avoid them as in fraud of his rights; on the contrary, he virtually affirms them by praying that "Whipple should furnish accounts of the same, and share and share alike in the proceeds and profits derived therefrom." (p. 60.)

In defining the rights and obligations of the parties, this Court decreed—

> "That Whipple and Dickerson be held as trustees for the complainant, to the extent of one-half of the two patents, 96,665 and 102,662, and that an accounting be had for all sales made by them."

As these patents were not found in the record, the court say, in the opinion:

> "It is impossible to give any conclusive judgment as to how far they are identical, or how far there may be distinctive features under which the whole or some part of the two patents may be sustained."

The liability of Whipple as trustee for one-half of all that has come to his hands, is rested on the 6th Article of the partnership, which provides—

> "That all letters patent that may be obtained in this country and all other countries by virtue of said invention, or by reason of any improvement or modification of the same by either party, shall be owned by the parties to this agreement in equal shares, and all proceeds of sales shall be shared by them share and share alike." p. 40.

The bill prayed that these patents be vacated, set aside, and annulled as obtained by collusion and fraud. p. 60.

This is not done. On the contrary, the decision recognizes the validity of the patents in decreeing that Ambler was entitled to "an undivided half of both patents to Dickerson & Whipple, and that an accounting be had as to the profits realized by them from the use or sale of said patents."

The District Court, under the mandate of this court of 30th November, 1874, set aside its decree 27th June, 1871, dismissing the bill, and ordered, adjudged and decreed "that R. M. Whipple and T. S. Dickerson did receive, and *do now hold in trust* for the benefit of A. J. Ambler, one-half of the two patents issued to them, No. 95,665 and 102,662, and all the rights, sales, and receipts arising or to arise therefrom."

It was further decreed that "an accounting be had as to the profits realized by them from the use or sale of said patents."

This accounting was had, and on report of Special Auditor, a decree was entered in favor of Ambler for $666,052.35, his one-half of the proceeds of sales in the two patents." p. 95.

We assume as a fact that the sale to the Missouri company and to Blunt and Insley are included in the above amount; for, in the present litigation, the bill does not aver that the purchase money was not paid, nor is there any averment that the sums thus paid were not included in the accounting before the Auditor, 2d January, 1875.

Whether, therefore, we look to the fact that the absolute title to the patent was vested by the Government in Dickerson & Whipple;

Or to the terms of partnership between Whipple and Ambler;

Or to the assignment by Ambler to Whipple, all of which were of record in the Patent Office when the company made the purchase, we find full authority for the transaction now assailed.

Though the bill against Whipple and Dickerson was filed some months prior to the purchase by the Missouri Company, the decree thereon neither dissolved the partnership nor annuled the assignment by which Ambler was possessed of full power to sell.

It is difficult to understand why Ambler should complain of this sale, seeing that he has chosen to hold Whipple and Dickerson to an account for the proceeds of all sales made by them, and now has a decree against them.

The insolvency of Whipple, which is repeatedly averred in the present bill, in no wise affects the defendants. Nor is the allegation, that they made the purchase "without providing any means of protection for your orators' share of the purchase money," a ground of relief against them.

The bill is stuffed with the charge of fraud; its constant repetition adds no strength to the allegations. The facts set forth do not sustain them.

To give jurisdiction it is not sufficient to show a fraudulent intent if unaccompanied by an injurious act.

Clark v. *White*, 12 Pet., 196.

The company purchased in the belief that the title to the patents in question was fully vested in the vendors. In this belief it paid the purchase money.

If, in this it was in error, it has acquired nothing by the purchase. It loses what it has paid; it does not thereby become liable for any fraud upon the rights of others committed by the vendors in the sale.

The title vested by the Government in Whipple and Dickerson has not been divested. By the decision of this court a trust has been attached to it, in favor of the complainant, to the extent of one-half interest in the patents, and in all sales made thereunder.

The trust thus established was not on the property conveyed by them, but on the proceeds of the sales.

As we have stated, an accounting has been had for all sales made by Whipple & Dickerson, and a decree for a large amount rendered in favor of the complainant. This is an affirmance of the title of purchasers from them.

Parties.

The sale of which complaint is made was not to the defendant, but to the "Missouri Liquid Fuel and Illuminating Company.,'

This company was incorporated under the laws of the State of Missouri, with the usual powers.

To what extent corporations may be made liable for torts has been an inquiry as to which we have some conflicting opinions.

While it may be said that a corporation itself cannot,

strictly speaking, be guilty of a fraud, yet, as it can accomplish the objects for which it is formed only through the agency of individuals, if these act fraudulently, the corporation is liable for the fraud.

If, therefore, wrong has been done to the complainant by the purchase, the corporation making it is the party responsible, and not those who happen to be stockholders or directors therein at the time of the purchase. The corporation should have been made defendant to the bill.

Speaking of corporations, this Court says they may in their corporate name transact all business which the charter authorizes. They may make contracts, *commit torts*, and incur liabilities. They may sue or be sued with regard to all their transactions. The parties who deal with them understand this, and that they are dealing with a body which has these rights and is subject to these obligations, and they do not deal with, or count upon a liability of, the stockholders, whom they do not know, and with whom they have no privity of contract or other relation.

Hawes vs. *Oakland*, 104 U. S., 454.

(See BRADLEY, Jus., in *Morgan* vs. *R. R.*, 1 Woods, 15.

In the 34th, 35th, and 36th articles of the bill, it is averred that the company was formed with the *intention* of deceiving the public as well as the complainant, and in violation of the "corporate laws of the State as to mode of subscription and payment of stock."

In a proper proceeding the franchises of the corporation might be annulled on these grounds, but not by the complainant. As to him, the corporation continues to exist in full vigor, and with all the responsibility of a party capable of contracting.

Further, if this suit is in the nature of an accounting,

then Whipple, a citizen of Illinois, is a necessary party, and as he is not a defendant in the bill, it was properly dismissed. This was one of the grounds on which the bill, filed in 1875, was dismissed by Judge Dillon.

Where the interest of a party in the subject matter of the suit, and the relief sought is so bound up with that of the other parties that the Court cannot proceed without the legal presence of the party, in such case the Court refuses to entertain the suit when such party cannot be subjected to its jurisdiction.

Kendig vs. *Dean*, 97 U. S., 425.

Discovery.

The jurisdiction cannot be maintained as on a bill for discovery.

Every bill for relief is in reality a bill for discovery, since it asks an answer as to all matters charged, and seeks a discovery of all such matters.

But a bill of discovery properly so called, is for discovery of facts resting in the knowledge of defendant, and seeks no relief, though it may pray for a stay of proceedings at law until the discovery is made.

A prayer for relief in such a bill is demurrable.

Where, in such a bill, discovery is united with relief, and the allegations of the bill are not sufficient to retain it for relief, if the discovery be effectual it is demurrable.

Story's Eq. Plead., § 311, 313.

This is the rule established in England, but the law, as declared by this court, proceeds on the principle that where the court obtains jurisdiction in a cause for one purpose, it may retain it generally for relief.

The conflict of authority on this point is referred to by Story Eq. Jur., 1 Vol., § 70, 1, 2, 3.

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In *Russell* vs. *Clark*, the rule is thus stated by MARSHALL, C. J.:

> "It is true that if certain facts essential to the merits of a claim purely legal be exclusively within the knowledge of the party against whom that claim is asserted, he may be required, in a Court of Chancery, to disclose those facts; and the Court, being thus rightfully in possession of the cause, will proceed to determine the whole matter in controversy. But this rule cannot be abused by being employed as a mere pretext for bringing cases, properly for a Court of Law, into a Court of Equity."
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> 7 Cranch, 89.

In *Brown* vs. *Swann*, the Court say:

> "The rule to be applied to a bill seeking discovery from an interested party is that the bill should charge that the facts are known to defendant and ought to be disclosed by him, and *that the complainant is unable to prove them by other testimony.*
>
> "Unless such averments are required, it is obvious that the boundaries between the chancery and the common law courts would be broken down."
>
> 10 Pet., 502.

Applying these principles to the bill before us, it is apparent that it contains no such allegation as can maintain it as a bill of discovery.

On the contrary, while it is prayed that the defendants should render an account of sales, the bill itself, in its 69th article, sets forth a detailed statement of them; and by the 44th article it is shown that he had already taken the depositions of four of the defendants in the suit against Ambler and Dickerson.

The opinion of Judge Dillon, heretofore referred to, will be found in 3d Vol. of the Central Law Journal, p. 334.

In this, it is said, it was difficult to ascertain from the

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On the contrary, while it is prayed that the defendants should render an account of sales, the bill itself, in its 69th article, sets forth a detailed statement of them; and by the 44th article it is shown that he had already taken the depositions of four of the defendants in the suit against Ambler and Dickerson.

The opinion of Judge Dillon, heretofore referred to, will be found in 3d Vol. of the Central Law Journal, p. 334.

In this, it is said, it was difficult to ascertain from the

bill whether Ambler seeks to obtain those rights and franchises which have been conveyed to Blunt and Insley on the ground of its being a fraudulent sale, or wants to confirm it and get the proceeds. He cannot say there is fraud and I want my patent back, and at the same time say I waive the fraud and want the proceeds.

Again, unless it can be alleged that the partnership is at an end, and that Ambler has succeeded to the rights of the partners, certainly, in a proceeding in which his co-partner is not made a party, there can be no relief.

If he wants to have this arrangement set aside for fraud committed by his partner, Whipple is a necessary party. If he seeks an account for unpaid purchase money, he cannot sustain his action alone.

In the suit of Ambler *vs.* Whipple and Dickerson, the Supreme Court held that in the partnership arrangement, Ambler was entitled to one half against Whipple, and also against Dickerson, because he had knowingly connected himself with Whipple in the perpetration of fraud. That has misled the counsel in thinking that every body against whom they can charge fraud can be sued by Ambler in the same way that Ambler could sue, and did sue, his co-partner for an accounting; besides that, Dickerson was in that suit a necessary party—two of the patents were issued to him and Whipple. To apply the observation of the Supreme Court in reference to Dickerson, would be virtually to overthrow the law applicable to partnership.

We submit there is no error in sustaining the demurrer, and that the decree should be affirmed.

PHILLIPS & PHILLIPS,
For Appellees.

Longitudinal Elevation of

Ship „ HARV

LOAD WATER LINE

Cabin-house on Deck

Hatch

Hatch

Main Hatch

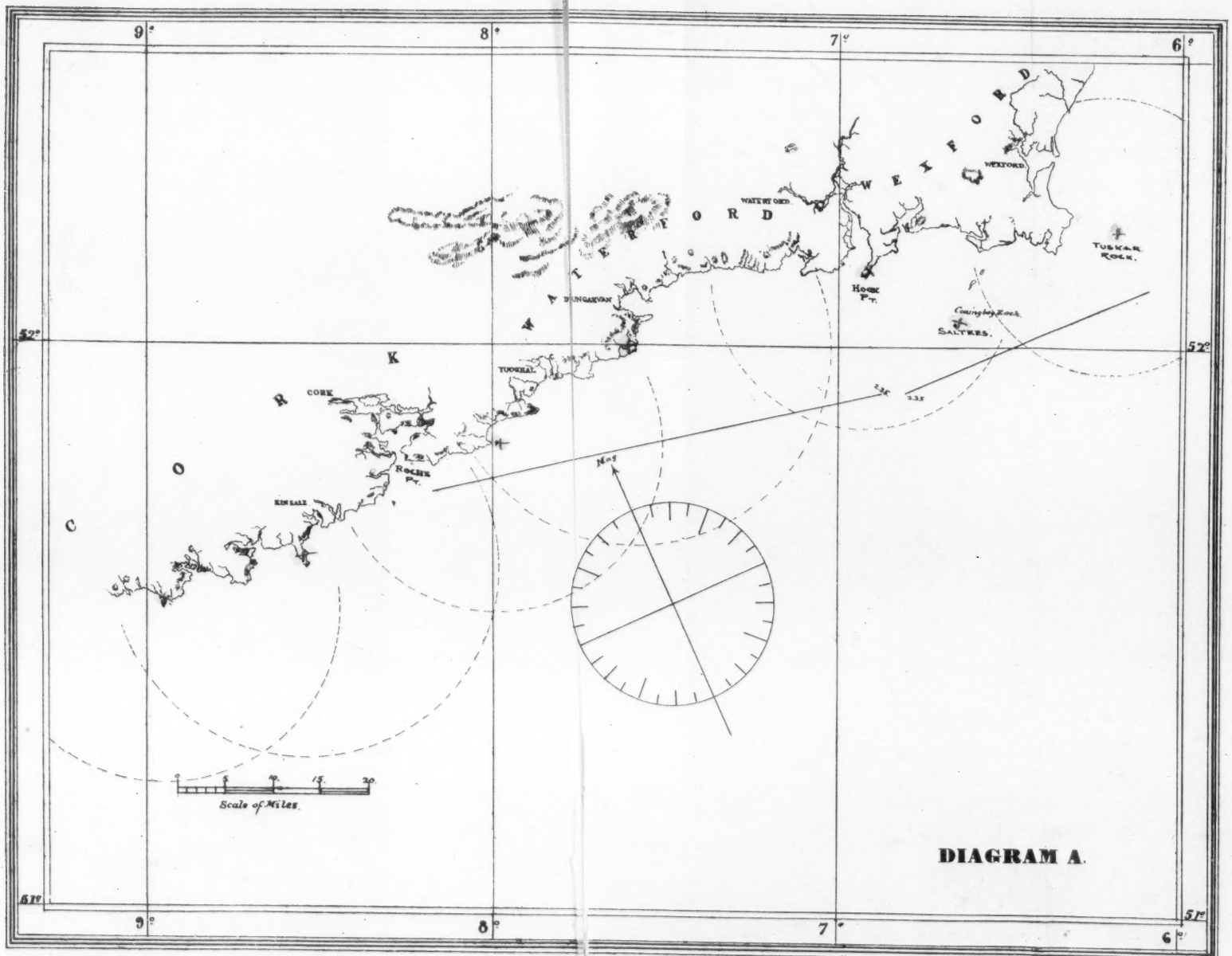
Half-Breadth-Plan of Main and Forecastle-Decks

. 169
…rshall et al
v.
…"Adriatic"
} page 675

…HARVEST QUEEN"

Exhibit A

Fore-castle Deck
Plank Sheer
Rail
Main Deck
Wale
Between Deck
Load Water Line
Rider & Breast Hook
Lower Deck
Rider
Rider & Breast Hook
Midship Section
LOAD WATER LINE
R. Studer
Scale ¾ inch = 1 foot.
House on Deck, forming continuation of Fore-castle
Fore-castle-Deck
Cant Frame
Wale
Plank-sheer
Rail
Rising Rail


9°
8°
7°
6°
52°
51°
W E X F O R D
WEXFORD
WATERFORD
TUSKAR ROCK.
HOOK Pt.
SALTEES.
DUNGARVAN
TOURIAL
CORK
ROCHE Pt.
KINSALE
C O R K
Scale of Miles.
DIAGRAM A.

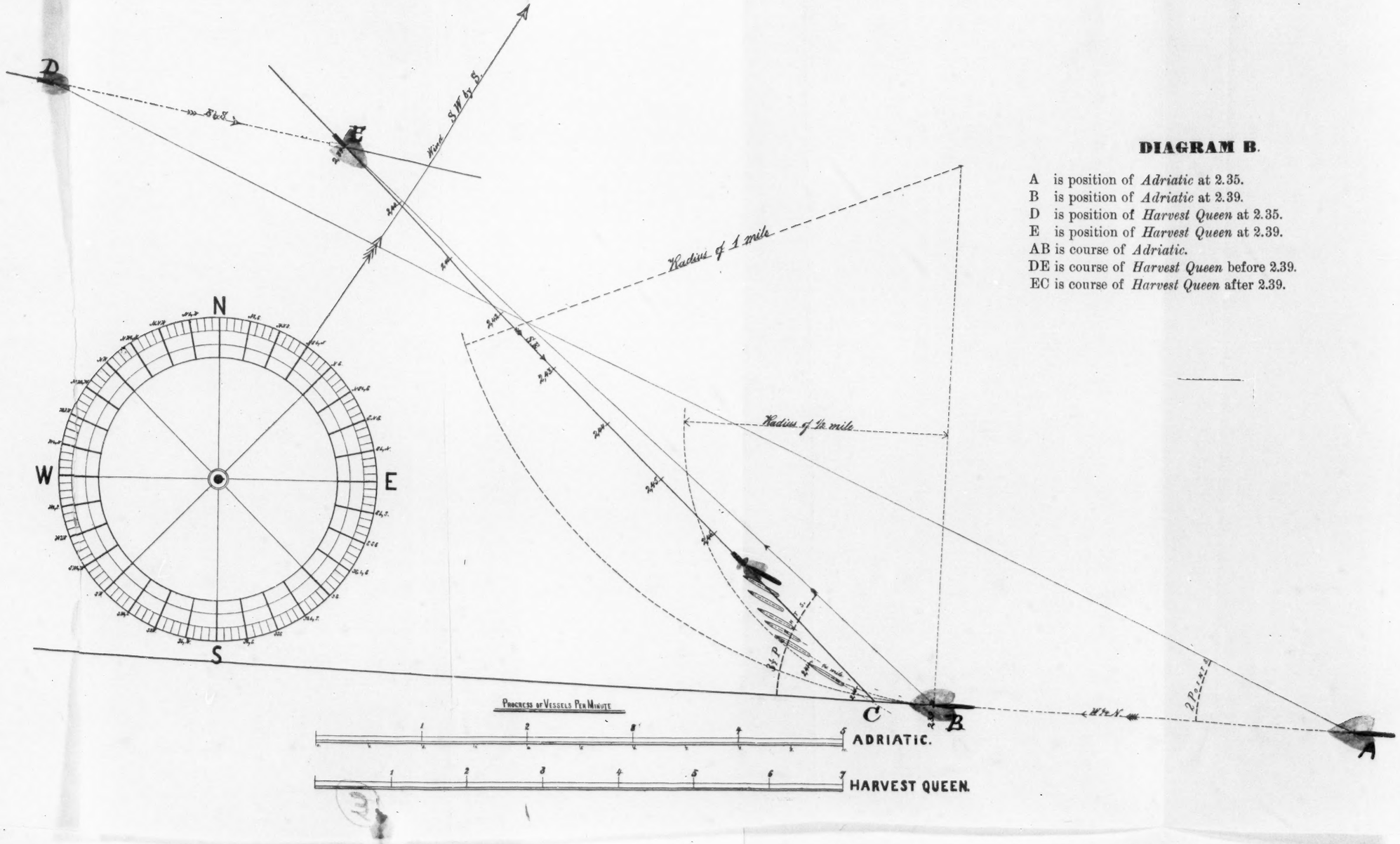
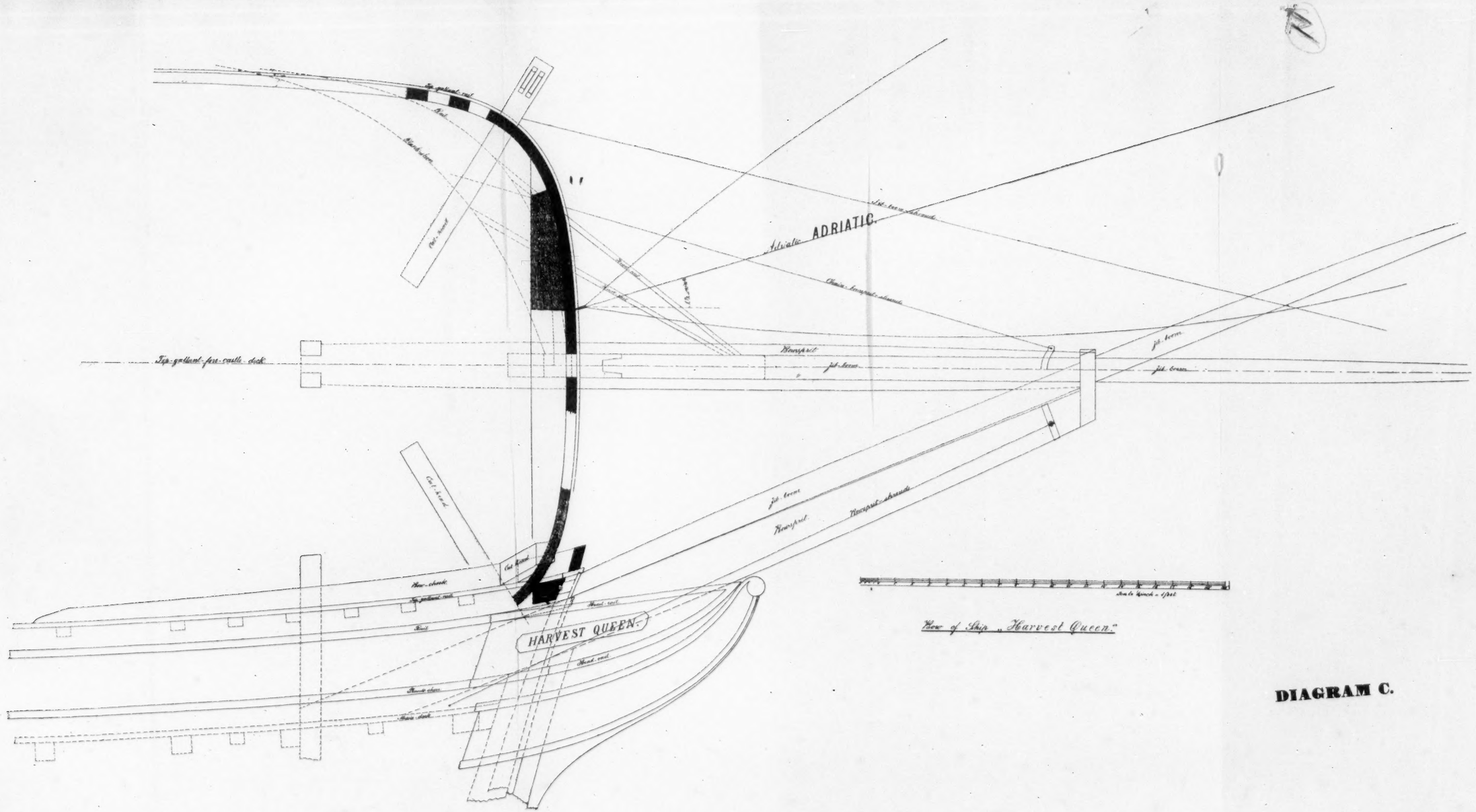


DIAGRAM B.
A is position of *Adriatic* at 2.35.
B is position of *Adriatic* at 2.39.
D is position of *Harvest Queen* at 2.35.
E is position of *Harvest Queen* at 2.39.
AB is course of *Adriatic*.
DE is course of *Harvest Queen* before 2.39.
EC is course of *Harvest Queen* after 2.39.
Radius of 1 mile
Radius of ½ mile
Wind S.W. by S.
N
S
E
W
PROGRESS OF VESSELS PER MINUTE
ADRIATIC.
HARVEST QUEEN.



Bow of Ship „Harvest Queen."

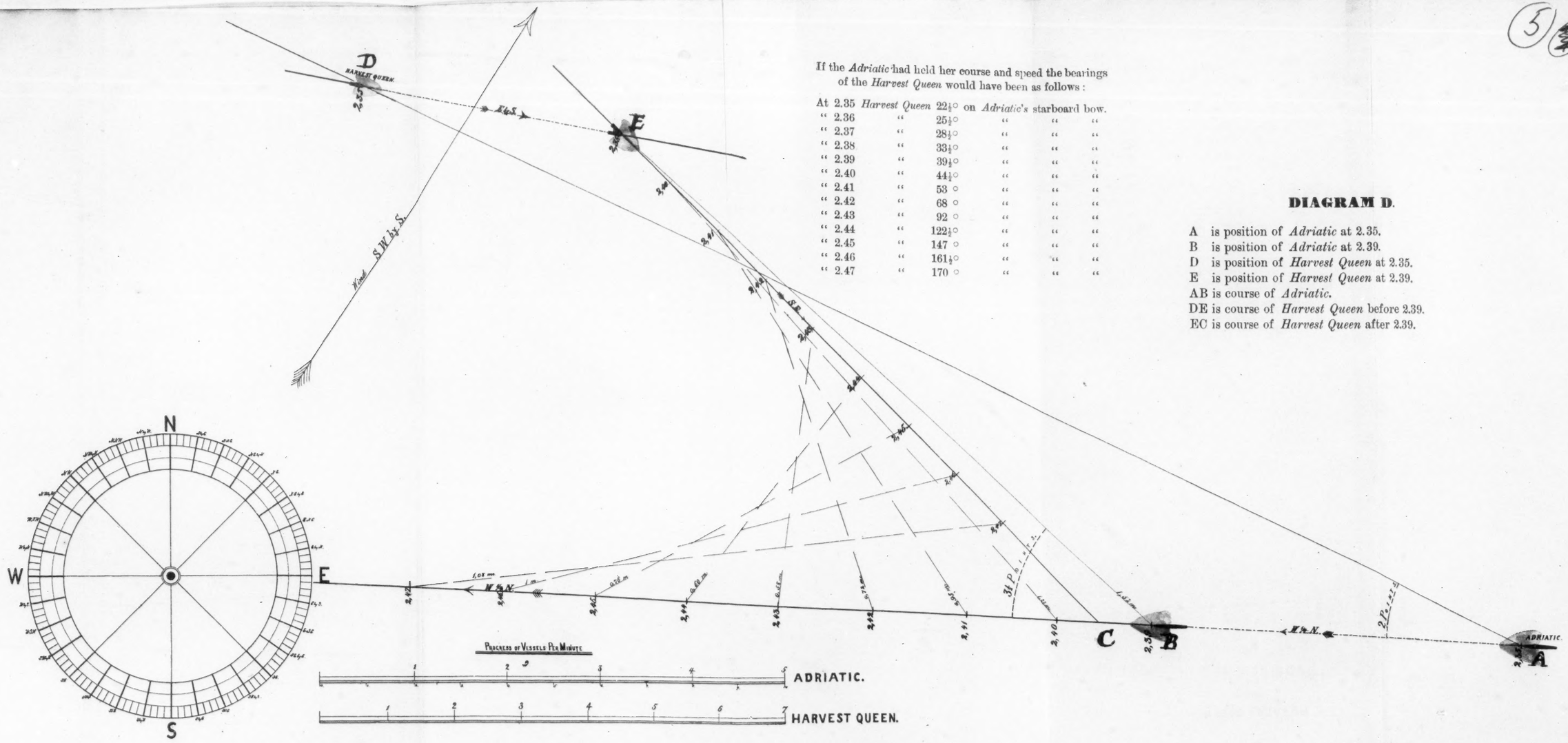
DIAGRAM C.

If the *Adriatic* had held her course and speed the bearings of the *Harvest Queen* would have been as follows:

At 2.35	*Harvest Queen*	22½°	on	*Adriatic's*	starboard bow.
" 2.36	"	25½°	"	"	"
" 2.37	"	28½°	"	"	"
" 2.38	"	33½°	"	"	"
" 2.39	"	39½°	"	"	"
" 2.40	"	44½°	"	"	"
" 2.41	"	53 °	"	"	"
" 2.42	"	68 °	"	"	"
" 2.43	"	92 °	"	"	"
" 2.44	"	122½°	"	"	"
" 2.45	"	147 °	"	"	"
" 2.46	"	161½°	"	"	"
" 2.47	"	170 °	"	"	"

DIAGRAM D.

A is position of *Adriatic* at 2.35.
B is position of *Adriatic* at 2.39.
D is position of *Harvest Queen* at 2.35.
E is position of *Harvest Queen* at 2.39.
AB is course of *Adriatic*.
DE is course of *Harvest Queen* before 2.39.
EC is course of *Harvest Queen* after 2.39.



2. Sheets. Sheet 1.

Whipple & Ambler,

Gas Generator.

No. 92,687. Patented July 13. 1869.

No. 128
Ambler
v.
Chouteau et al
} page 133.

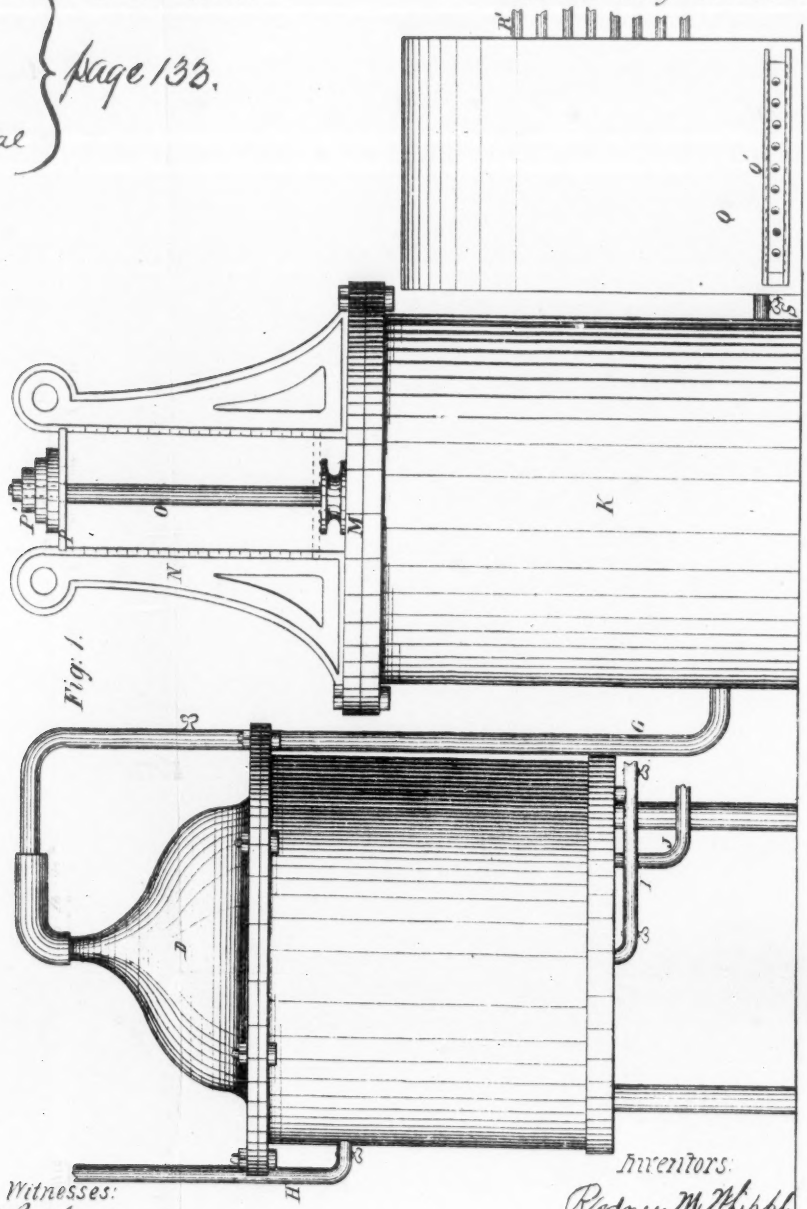


Fig: 1.

Witnesses:
W. R. Ambler
Wm. L. Maton

Inventors:
Rodney M. Whipple
Augustin D. Ambler

Whipple & Ambler,

2 Sheets. Sheet 2.

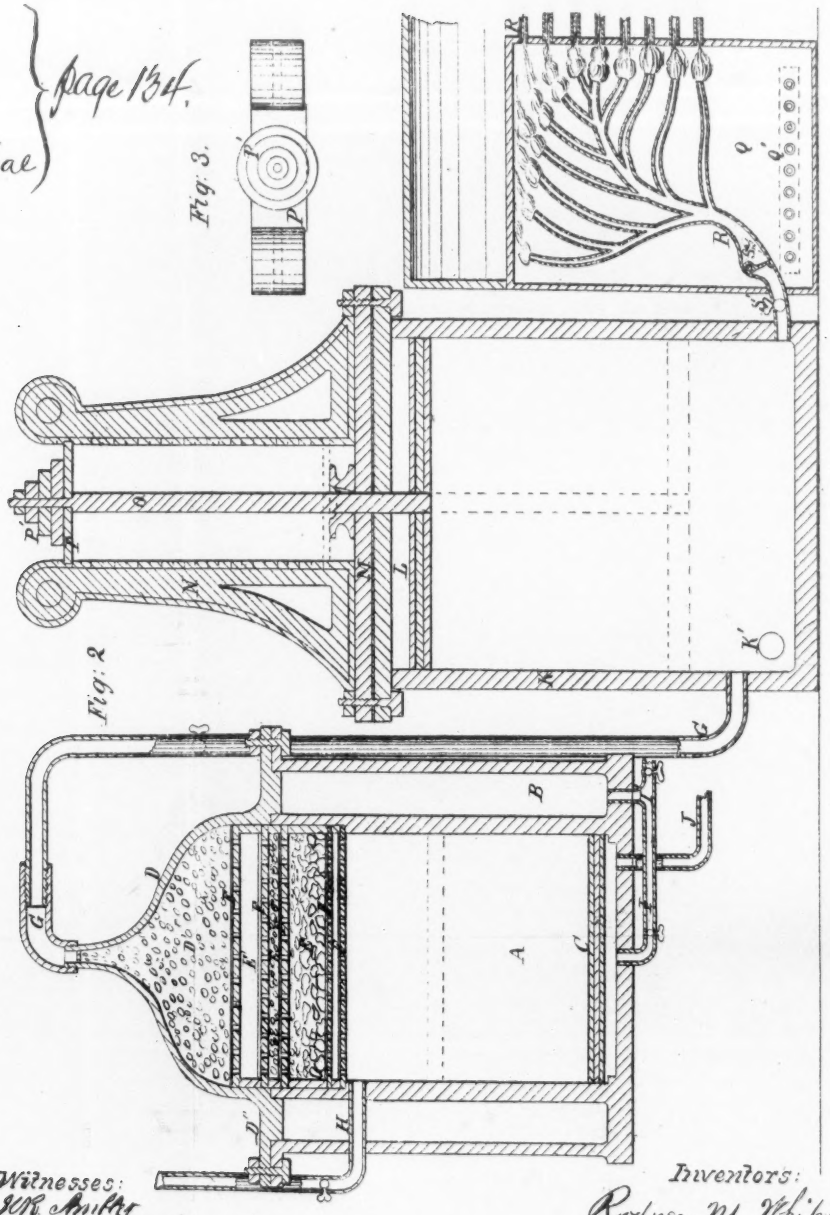
Gas Generator.

No. 92,687. Patented July 13. 1869.

No. 128
Ambler
v.
Chouteau et al
} Page 134.

Fig. 3.

Fig. 2



Witnesses:
[illegible]
Wm. [illegible]

Inventors:
Rodney M Whipple
Augustin J Ambler

T. S. Dickerson. Sheet 1, 2 Sheets.

Hydro carbon Gas.

No. 95,665. Patented Oct. 12, 1869.

No. 138
Ambler
v.
Choulean
et al
} page 138.

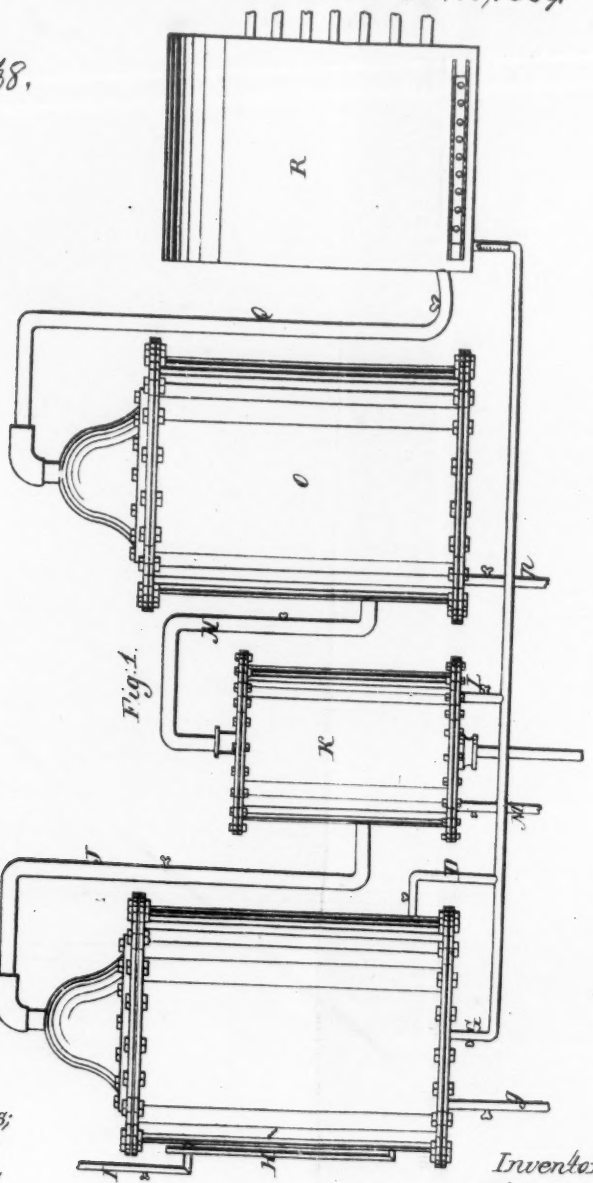


Fig. 1.

Witnesses;
W. W. Curtis
J. A. Phillips

Inventor;
Thomas S. Dickerson

T. S. Dickerson. Sheet 2, 2 Sheets

Hydro carbon Gas.

No. 95,665. Patented Oct. 12, 1869.

No. 138
Ambler
v.
Chouteau
et al
page 139

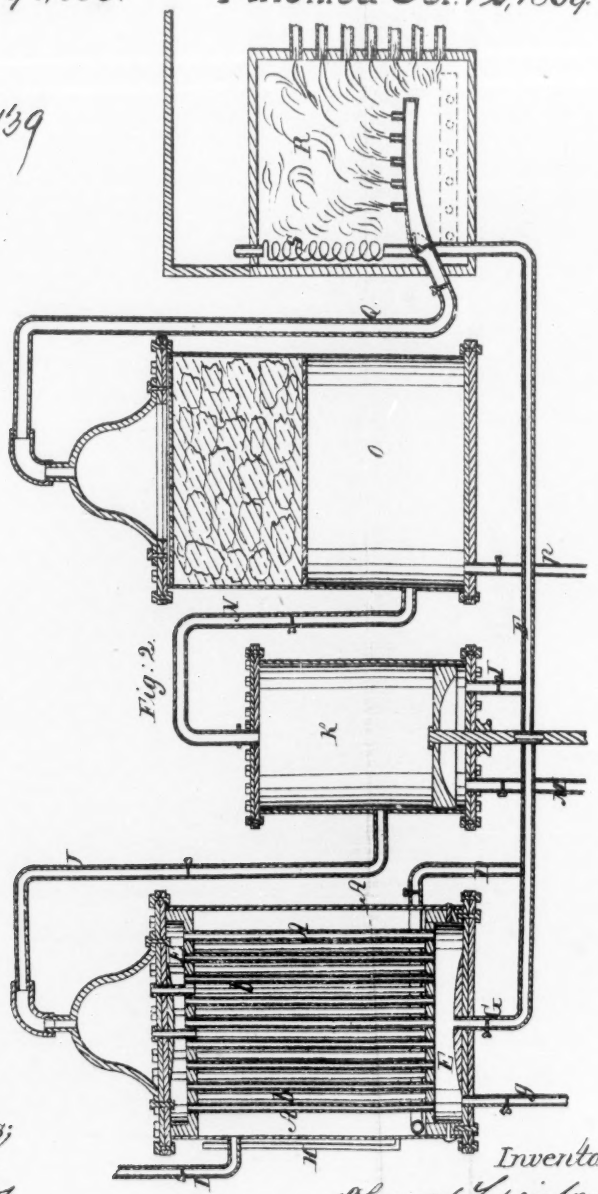


Fig: 2.

Witnesses;
W. W. Curtis
J. H. Phillips

Inventor;
Thomas J. Dickerson

Dickerson & Whipple
Hydrocarbon Gas.

No. 102,662 Patented May 3, 1870.

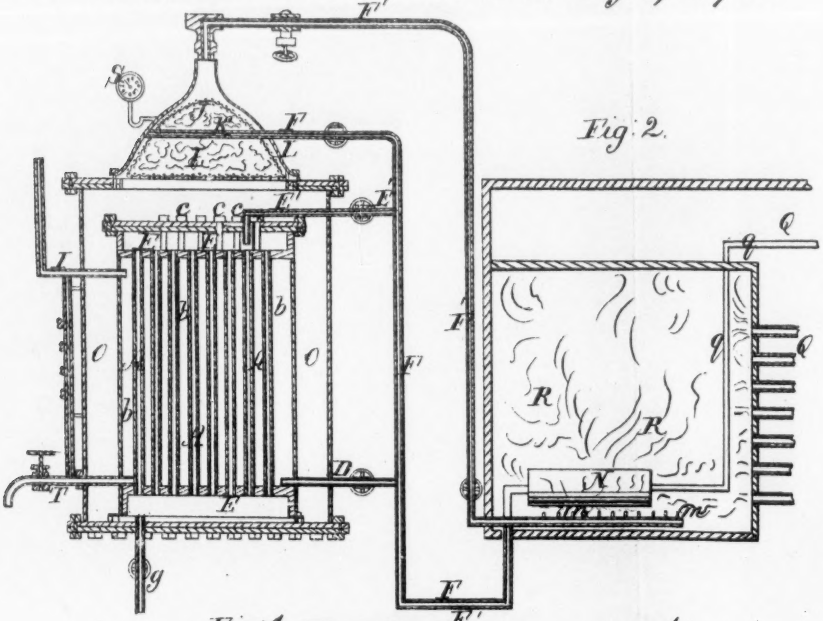
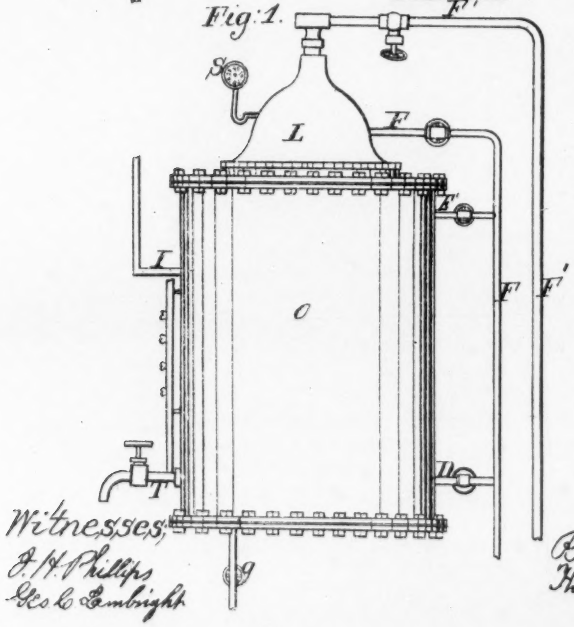


Fig: 2.

Fig: 1.



No. 128
Ambler
v.
Choutean et al

Page 143

Witnesses;
F. H. Phillips
Geo. C. Lembright

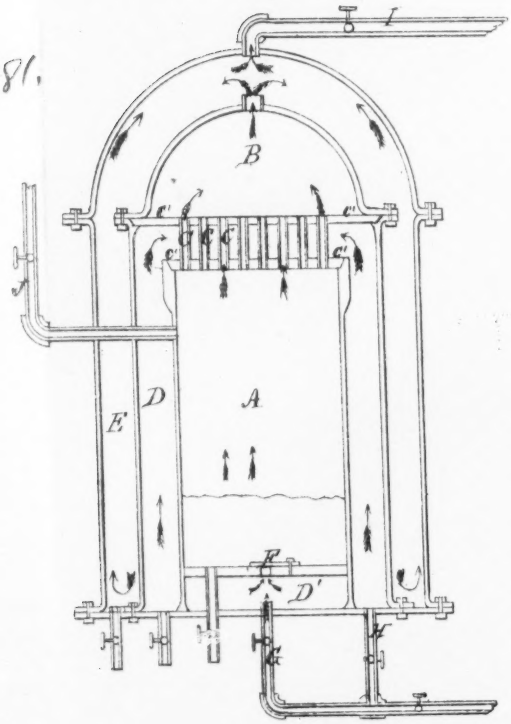
Inventors;
Rodney M. Whipple
Thomas S. Dickerson
by R. M. Whipple

A. I. AMBLER.

Improvement in Apparatus for Generating Gas from Petroleum.

No. 131,240. Patented Sep. 10, 1872.

No. 128
Ambler
v.
Chouteau
et al.
Page 181.



Witnesses
Henry N. Mills
Jno. A. Ellis

Inventor
A. I. Ambler

T. S. DICKERSON & R. M. WHIPPLE.

Process and Apparatus for Using Liquid Fuel for Producing Heat and Light.

No. 5,326. Reissued March 18, 1873.

No. 128
Ambler
v.
Chouteau
et al.
} Page 205.

Fig. 2.

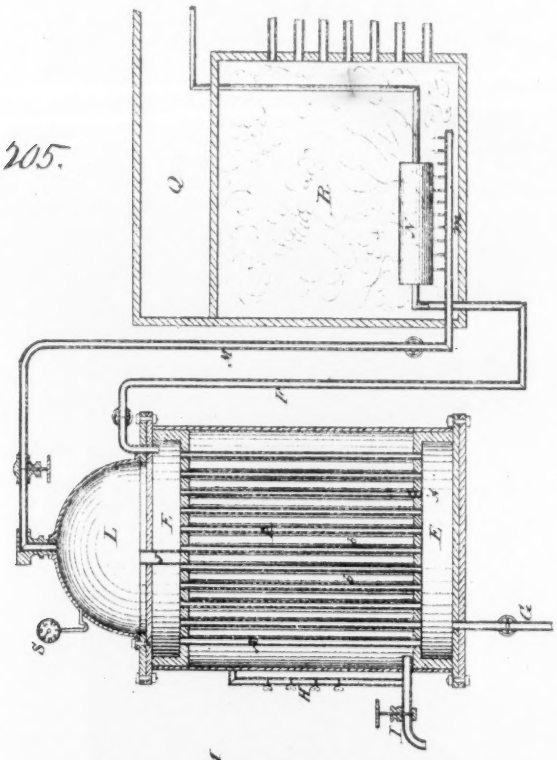
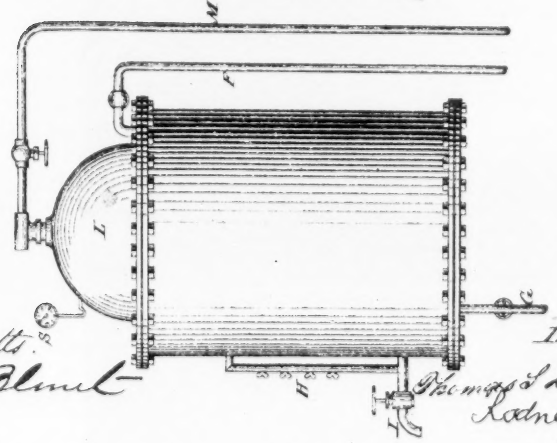


Fig. 1.



Witnesses.
J. M. Gesbetts.
Jas. G. Blunt

Inventors.
Pitcairn & Dickerson
Rodney M. Whipple

2 Sheets--Sheet 1.

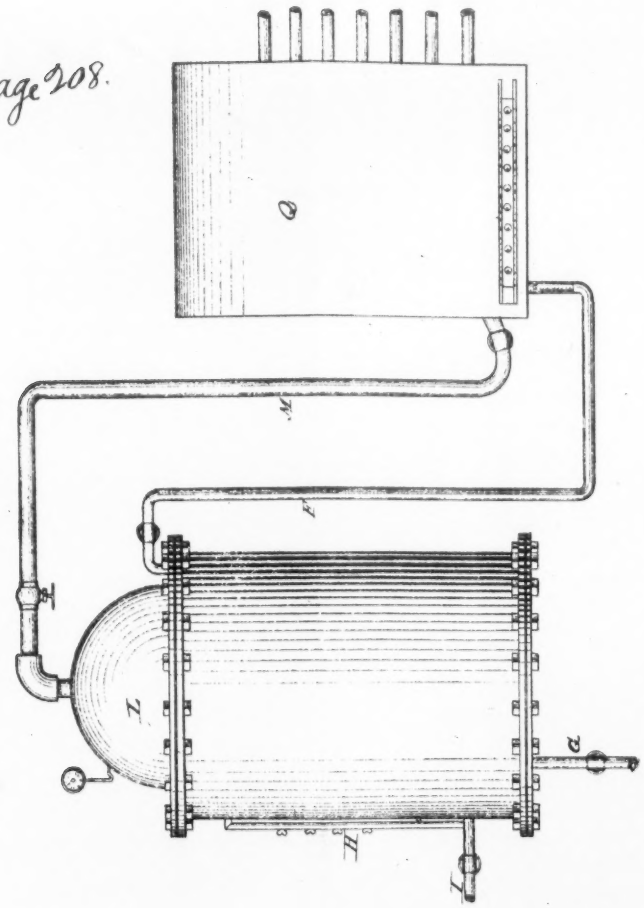
T. S. DICKERSON.

Manufacture and Application of Gas from Petroleum, &c

No. 5,327. Reissued March 18, 1873.

No. 128
Amber
v.
Chouteau
et al.
page 208.

Fig. 1.



Witnesses:
J. M. Tebbetts.
Jas. G. Blunt

Inventor:
Thomas S. Dickerson.

2 Sheets--Sheet 2.

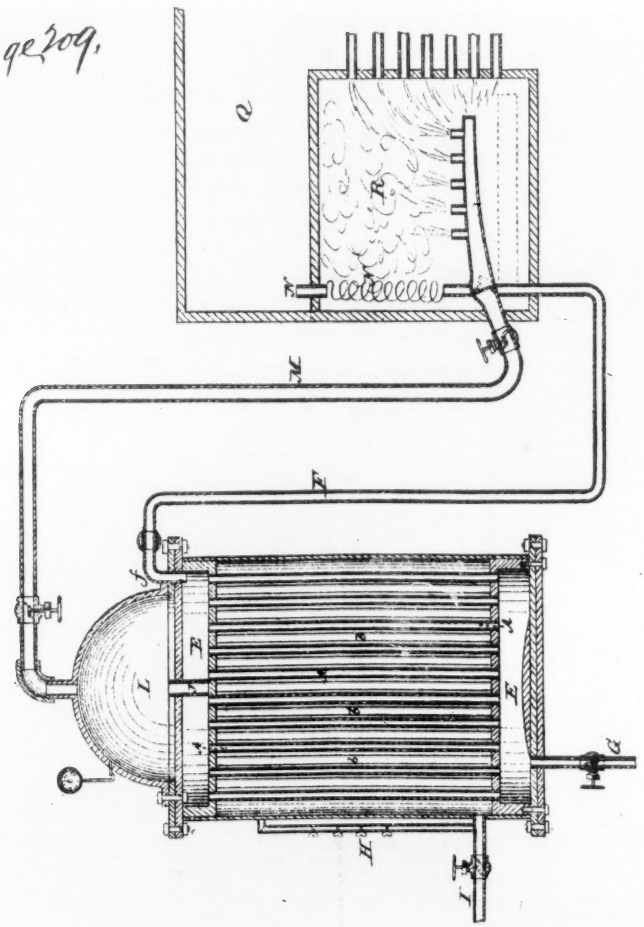
T. S. DICKERSON.

Manufacture and Application of Gas from Petroleum, &c

No. 5,327 Reissued March 18, 1873.

No. 128 Ambler v. Chouteau et al. page 209.

Fig. 2.



Witnesses:
J. M. Tebbetts
Jas. G. Blunt

Inventor
Thomas S. Dickerson